PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

ASSEMBLED FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS,

1874.

VOLUME XIII.

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PROCEEDINGS

OF THE

COUNCIL OF THE GOVERNOR OF BOMBAY

FOR THE

PURPOSE OF MAKING LAWS AND REGULATIONS.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS' ACT, 1861."

The Council met at Bombay on Wednesday, the 25th March 1874, at noon.

PRESENT:

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

His Excellency the Honourable SIR AUGUSTUS ALMERIC SPENCER, K.C.B.
The Honourable H. P. St. G. TUCKER.
The Honourable A. ROGERS.
The Honourable MUNGULDASS NUTHOOBHOY, C.S.I.
The Honourable COLONEL M. K. KENNEDY.
The Honourable SIR JAMSETJEE JEJEEBHOY, Bart., C.S.I.
The Honourable NARAYAN VASUDEVJEE.
The Honourable J. K. BYTHELL.
The Honourable F. S. CHAPMAN.

Affirmation of office, &c., taken by Mr. Chapman.

The Honourable F. S. CHAPMAN took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to the Council.

The following papers were presented to the Council:—

1. Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of the "Bill to amend Bombay Act No. II. of 1864, providing for the Periodical Survey of Steam Vessels, and to provide for the Examination of Engineers of Steam Vessels."
2. Report of the Select Committee on the Jails Bill.
3. Letters from the Inspector General of Prisons, Senior Assistant Judge, Sholapur, and Registrar of Her Majesty's High Court of Judicature, regarding the Jails Bill.

The Honourable Mr. ROGERS, in moving the first reading of the Bill No. 1 of 1874 (the Tramways Bill), said:—Sir,—I beg to move the first reading of Bill No. 1 of 1874, to authorize the making of Street Tramways in Bombay. It will be seen by the appendix to the Bill that articles of agreement were made last year between Messrs. Stearns and Kittredge and the Municipal Commissioner of Bombay to enable that firm to construct tramways in the city of Bombay. That agreement was subsequently confirmed by Government, and the purport of this Bill is to enable the promoters of the tramway to carry out its objects. Tramways have now been laid down in most of the principal cities in the world, and it has always been found necessary to provide special rules for their construction and management. The Bill before us is similar to the legislation agreed upon regarding tramways in Calcutta and elsewhere, and of course its objects are to secure the convenience of the community. The only point I may remark upon is, that although the Municipal Commissioner has power, with the sanction of the Corporation, to permit the construction of tramways, he will not have power, without special enactment, to hand over certain portions of the public roads and streets for the special use of tramways. It is obvious that if an Act of this kind were not passed, it would be possible for the owners of private carriages to drive on the rails, in front of a tramway car, so as to impede it deliberately. It is partly to protect the Tramway Company from being interfered with in this way that this Bill is introduced, and partly to make people liable to certain penalties in case of non-payment of their fares. With these remarks, I beg to move that this Bill be read a first time.

Mr. Rogers moves the first reading of the Tramways Bill.

The Honourable Mr. CHAPMAN—Sir,—One would suppose from the preamble of this Bill that this Tramway Company were about to confer a great benefit upon the community generally. But I believe I speak the sentiments of a large portion of the public who use our roads, when I say that the tramways are an intolerable nuisance at present, and really I cannot see how they can be otherwise so long as the rails are laid down upon the present system. I believe that it will be necessary to provide in some way for the paving of the parts of the road adjoining the rails, for so long as the rails are laid in macadamised roads the metalling will be giving way, leaving the rails bare. I think also that in this Bill we shall have to consider how people may be compensated speedily for the injuries which their persons or their property may receive from these tramways. I cannot say what the ordinary remedy at law for this is, but it seems to me that it is extremely desirable to provide in this Bill that a person whose horse or carriage has been damaged by the rails should have some speedy means provided him of obtaining redress. I think it right to remark that the popular feeling about the tramway system is that it is a great nuisance, and therefore in any Bill upon the subject we ought to endeavour to reduce the evil to a minimum.

Mr. Chapman states the popular objections to tramways in Bombay, and considers that the Bill should provide for direct redress being obtainable from the Tramway Company for injuries caused through them to person or property.

The Honourable Colonel KENNEDY—I quite agree with the remarks of the Honourable Mr. Chapman. The tramways are a considerable nuisance and a great impediment to the ordinary traffic of the city. It is perhaps too late now to take these objections, because the tramways are laid upon most of our principal streets; but I agree that it is now our duty to reduce the evil to a minimum, as the Honourable Mr. Chapman has just

Colonel Kennedy agrees with Mr. Chapman.

said. When the carriages run upon these rails there will, I believe, in consequence of the vibration, be a dislodgment of the adjoining metal, and thus there will be a continual impediment to ordinary carriage traffic. Looking at the narrowness and extreme tortuousness of most of the roads in Bombay, the rails cannot be avoided, and I think that whoever may attempt to cross them when the cars have run upon them for some time will feel a considerable jar upon his wheels. It seems to me that the people who will chiefly be benefitted by these tramways are the coach-builders.

The Honourable Mr. MUNGULDASS also concurred with the Honourable Mr. Chapman. In Abdool Rahmon Street the carriage way was so narrow that private carriages would be compelled to go upon the tramways, and yet the honourable mover had stated that one of the objects of the Bill was to prevent private carriages from going on the rails.

His Excellency the PRESIDENT—There are provisions for taking away the rails in a street if they should prove inconvenient. Certainly, the unfortunate tramway presents itself in its most unfavourable state when it is under construction, and I believe that this is the principal reason for its being so unpopular. It may improve in popularity when it is complete and in working order.

The Honourable Colonel KENNEDY—Completed portions of the tramway that have not been used by cars already offer obstacles to carriage traffic. What will the tramway be when it has borne traffic for some time?

The Honourable Mr. TUCKER—The present discussion is hardly in order, because the Executive Government, so far as they are concerned, are committed to the principle of the Bill; and, unless it be intended to throw it out altogether, this is not the time for the consideration of details. I agree with His Excellency that it is rather unfortunate that the consideration of this measure has been postponed to the present time, when the public are experiencing a great amount of inconvenience from the construction of the tramways. I trust, however, that what has been said in this room will show the projectors the necessity of exercising strict supervision over their contractors, so that the ordinary carriage traffic may not be obstructed or disturbed by the laying down of their lines. If so many streets had not been broken up at one time, and the work had been completed in short sections, I do not think that the unpopularity of the experiment would have been so great as it appears to be at present. However, I do not consider that the project ought to be condemned, because inconvenience and obstruction have been caused when the lines were under construction. Government sanctioned the agreement with the Tramway Company, under the hope and in the expectation that the new system would improve the means of locomotion in this city and be advantageous to the poorer classes; and I still hope that, notwithstanding the temporary inconvenience which is being experienced, this hope and expectation will be realised. During my recent visit to England I noticed a tramway of this description which runs through Camden Town, and there seemed to be no difficulty whatever in respect to the passage of ordinary carriages, while the cars seemed to be exceedingly popular with the people inhabiting that suburb of the metropolis. I believe that although the Bombay tramway may not find much favour among that class of persons who are able to afford carriages, yet it will confer great benefits upon the poorer

Mr. Tucker thinks tramways in Bombay will improve when they are being worked. He notices in the Bill certain provisions not in accordance with terms of Municipal Act.

classes of the community. I notice in the Bill before us certain provisions which are not in complete accordance with the Bombay Municipal Act. It was my object in that enactment to prevent any new streets being opened except with the sanction of the Municipal Commissioner, the Corporation, and the Government. When the agreement with the promoters of the Tramway Company was entered into I was too ill to attend to business, or I should have pointed out that the proposed contract was not in accord with the Act. Government has now, it seems to me, virtually abdicated its power to interfere in this matter, and left the authority to determine what streets shall be opened in the hands of the Municipal Commissioner only, and that agreement we must now carry out. I was of opinion that no new street should be opened without the concurrence of the Corporation, the Municipal Commissioner, and the Government; but this joint authority will, now that this agreement has been entered into, be concentrated in the Commissioner. I call attention to this matter to show that the serious responsibility is now about to be vested in the Municipal Commissioner, and I trust that this officer will take care that no streets are opened up in a manner which will be injurious to the public. To him the community will look, if the extension of tramways is carried out in a manner that will be detrimental to the public interests.

The Honourable Colonel KENNEDY—I see that the tramways are now being extended up to Byculla.

The Honourable Mr. ROGERS—Although tramways have been criticised severely by several honourable members, I understand that it is not the intention of any of them to oppose my motion for the first reading of the Bill. I think, however, that in the course of these criticisms some strong expressions were used which were scarcely justifiable. The Honourable Mr. Chapman said that no benefit would accrue from the system, and that it is an unmitigated nuisance. Now, seeing that the system has not had a trial in Bombay yet, I do not think the Honourable Mr. Chapman should have said what he did. Tramways have been tried and have answered in other parts of the world, and there is no apparent reason why they should not succeed in this city. The Honourable Mr. Tucker has mentioned that he saw tramways flourishing in London.

The Honourable Mr. TUCKER—The tramway I referred to was not in a crowded part of London, and the streets in which it was laid were much broader than the majority of the streets in Bombay.

The Honourable Mr. ROGERS—There are many streets in Bombay which are as broad as Camden Town, and I hope that when the system is set agoing here it will not be found "to be an intolerable nuisance" to the public, but, on the contrary, a great benefit. Some observations were made with regard to the probability of the road metalling being shaken up and carriages being damaged while crossing the rails; but these are merely matters of detail, which may surely be left to the care of the Municipal Commissioner. Moreover, as the Honourable Mr. Tucker has just pointed out, an agreement has been entered into by Government which it must carry out now, so that we are committed to the principle of the measure.

The Bill read a first time.

The motion that this Bill be now read a first time was put to the Council by His Excellency the President and carried.

The Honourable Mr. ROGERS did not think it necessary to refer the Bill to a Select Committee, as the Committee of the whole Council would be sufficient.

His Excellency the PRESIDENT—Considering the opposition which has been shown to the Bill, I think it would be advisable to have its provisions thoroughly sifted in Select Committee. I always expected that this Bill would be referred to a Select Committee, because I believe it possible that such a Committee might see its way to giving the public more protection, as has been suggested, than the Bill at present provides.

The Honourable Messrs. TUCKER and Colonel KENNEDY concurred with His Excellency the President.

The Bill referred to a Select Committee.

It was then agreed to refer the Bill to a Select Committee composed of the Honourable the Advocate-General, the Honourable Colonel Kennedy, the Honourable Sir Jamsetjee Jejeebhoy, the Honourable Mr. Chapman, and the mover, with instructions to present their report on or before the 31st instant.

Mr. Rogers moves the second reading of the Jails Bill, and mentions that it is not meant to interfere with the present law concerning the Bombay House of Correction.

The Honourable Mr. ROGERS then moved the second reading of the Jails Bill (No. 11 of 1873). He said:—As I entered into the details of this Bill when I moved the first reading of it at Poona, it will not be necessary for me to go thoroughly into the subject again. I shall simply, therefore, make a few observations upon the changes which the Select Committee have made in the reading of the Bill, and refer briefly to a few suggestions made by Judges of the High Court. These remarks can be more fully entered into when the Bill is being considered in detail. Sir Michael Westropp says:—"I think it should be distinctly stated whether or not the House of Correction in the Island of Bombay is to be subject to the provisions of this Bill. That establishment is the subject of a special enactment (R. O. R. III. of 1827) and of the Acts XVIII. of 1862, V. of 1865, and XIII. of 1856, Section 49." It appears that the provisions of Act VIII. of 1856, on which this Bill is founded, would be applicable in all its details to the House of Correction, and it has therefore been found advisable to insert words in the present Bill excluding the House of Correction from its operations. The Select Committee have also taken care to exempt all civil jails in Bombay from the provisions of this Act, in order that the powers and responsibilities of the Sheriff of Bombay in regard to civil matters should not be interfered with. Section 19 has given rise to a good deal of discussion. I think I mentioned, when introducing this Bill, that there had been a deal of difficulty experienced in the cases of prisoners sentenced to rigorous imprisonment for short terms. By the existing law they had to be sent either to a criminal jail or a subordinate jail, whichever happened to be nearest, and it was found impracticable in the subordinate jails to provide hard labour for prisoners. In the present Bill we have endeavoured to meet this objection in two ways—first, by shortening the time for which prisoners must be sent to subordinate jails, and, second, by giving the Executive Government the power to decide in certain cases that subordinate jails shall be considered capable of being pronounced fit to hold prisoners sentenced to hard labour for periods up to three months. An objection has been raised by the Honourable Mr. Justice Pinhey, in his remarks upon this Bill as to the responsibility which would devolve upon the class of officers who are now generally appointed Superintendents of Jails. He objects to Civil Surgeons being placed in charge of jails as Superin-

tendents, because their duties as private practitioners often prevent them from paying the requisite attention to the prisoners and the regular jail management. Whether Civil Surgeons should be appointed as Superintendents of Jails is, however, a mere matter of finance. In several instances lately we have endeavoured to appoint independent Superintendents, and so far as the means of Government will permit the same plan will be carried out regarding other jails. If in going through the details of the Bill any honourable member can point out any way by which we can provide for the superintendence of Jails being more thoroughly carried out by the Jailor than by the Superintendent, I shall have no objections to the suggestions being embodied in this Bill. As to the power of Superintendents to punish prisoners, the Inspector General of Prisons says that in some cases he considers punishments, especially flogging, are exercised rather indiscriminately, and we have therefore provided for rules being framed to regulate the matter. There is one other point which appears to have been overlooked by the Select Committee, and which Mr. Justice West has called attention to. I refer to the discipline of prisoners when employed in out-door work. Regarding this matter, the Honourable the Advocate-General has favoured me with two draft sections, which I shall propose when we go into Committee. I think these sections will meet the emergencies contemplated by Mr. Justice West.

The Honourable MR. CHAPMAN—Before the vote is put to the Council I would like to ask the Honourable Mr. Rogers whether he has paid any attention to Act XXVI. of 1870 of the Government of India—an Act which regulates the jails throughout the greater part of India? It is in many respects a superior measure to this one.

The Honourable MR. ROGERS—I beg to explain that the present Bill is not a new Bill. With few exceptions it is merely an amendment of the law that has been in force in Bombay since 1856, and which has been found to act fairly.

The Honourable MR. CHAPMAN—Looking at this Bill, as it now stands, there are some very important matters in it, to which I take objection. Here there is no distinction made between different grades of Superintendents, so that apparently a third class Superintendent would possess quite as large powers as those invested in the Superintendent of a Jail like Yerroda. This third class Superintendent may carry out all the powers invested in Superintendents by Section 32 (the penal clause) of this Bill, so that we may have cases of men getting perhaps Rs. 40 or Rs. 50 a month flogging prisoners. Again, no distinction is made here between tried and untried convicts flogged by a petty official like the ordinary third class Superintendent. The Act of the Government of India to which I have referred might with advantage be copied to a great extent.

Mr. Chapman thinks the Bill ought to have been more assimilated to Act XXVI. of 1870 of the Government of India.

The Honourable MR. TUCKER—Sir,—I was not present in the Council when the introduction of this Bill was decided upon, and I have hitherto taken no part in any of the deliberations to which it has given rise. I have no objection whatever to the principle of the measure, and fully recognize the necessity for the consolidation of the laws which now regulate the prisons, civil and criminal, of this Presidency, and for the repeal of enactments which are unsuited to the conditions and exigencies of the present time. The last Act for the administration of the Mofussil Jails was most imperfect, and it will be impossible to carry out an improved sys-

Mr. Tucker thinks the Shrievalty of Bombay should be abolished by the Bill. He moves that the Bill be referred back to Select Committee.

tem of prison management and discipline without amending it. I therefore cordially acquiesce in the steps which have been taken, but I am of opinion that further consideration is necessary before we can adopt the measure in its present shape. I regret very much that advantage has not been taken of the present occasion to get rid of the ancient office of Sheriff, which is a relic of that old unreasonable usage of appointing a man on liberal remuneration to a sinecure office, and then allowing the real duties to be performed by an underpaid deputy. At the commencement of the present century sinecure offices were common in England; but I am happy to state that they are gradually disappearing, and it is now high time that in India this remnant of the lax and imperfect notions which prevailed at one time of official obligations and the just apportionment of responsibility should also pass away. Since I have been a member of the Government of Bombay, I have more than once urged that this office on its present footing should be abolished, and a permanent Sheriff appointed who would discharge personally the duties which attach to the office and receive an adequate salary. By such an arrangement the public revenues would gain, and that portion of the community who come in contact with the Sheriff and his officers would be greatly benefitted and many abuses put an end to. My efforts have been hitherto unsuccessful, and I have always been met by two objections—1, that the proposed change would deprive the Government of the means of rewarding a deserving public servant or independent citizen, who had rendered good service to the Government or the public, and to this extent would diminish the power of the head of the Government; 2, that it would remove the personal responsibility of the Sheriff in the case of the escape of a civil debtor, and so be injurious to successful litigants. To the first class of objectors, I would say that I doubt if this little piece of patronage increases the prestige of the Governor or of the Government. It was said by a well-known English Premier, with reference to the selection of Bishops, that the exercise of each separate act of patronage made him one lukewarm friend and ninety-nine malignant enemies; and though the candidates for the Bombay office are much fewer in number than the aspirants for a mitre in England, I am inclined to think the disposal of the Shrievalty in most cases produces an effect somewhat similar. I am of opinion that neither the head of the Government nor the collective Government gain by the possession of this piece of patronage. With respect to the second objection, the pecuniary liability of the Sheriff in case of escapes is more nominal than real. In England, where the office of Sheriff is assigned to rich men, this responsibility has some significance. But in India, considering the means of the class of persons from whom Sheriffs are generally chosen, it would be neither just nor practicable to enforce strictly the liability of Sheriffs, and, if tried, this supposed security for judgment creditors will be found entirely worthless. I should like, therefore, to see this anomaly got rid of, and the maintenance of the existing usage of the city of Bombay put an end to. It will probably not be long before a change will be made in the law regarding imprisonment for debt, and this mode of enforcing satisfaction of a decree will be abolished, and resort to imprisonment only had to punish the fraudulent and reckless contractor of debt. If this be the tendency of affairs, little risk will be increased by the substitution of the general responsibility of Government for the personal liability of the Sheriff. It is desirable also to revive the old practice of making the Session Judges visitors of each District Jail located at the stations where the Session Judges hold their Courts. When the Session Judges were relieved from the charge of the executive management of prisons, their inquisitorial functions were transferred to the District and other Magistrates; and, practically speaking, it has been to the Hoozoor Deputy Magistrates that these periodical visitations

have generally fallen. The position and influence of these officers have not usually been found sufficient to secure an effective inspection, and it is desirable to reinstate the Session Judges in the office of visitors. Each Session Judge should visit the jail at his head-quarter station at least once in each month, and, during intermediate times, he should be able to delegate to his assistant the duty of visiting. It might be as well also to introduce a system of Jail delivery by providing that, at each Criminal Sessions, the Superintendent or Jailor of a District or Central Jail shall furnish the Session Judge with a list showing the number of prisoners in confinement, otherwise than by judicial sentence for a longer period than one month. The Session Judge would examine this list, and bring to the notice of the High Court or of Government any case in which a person appears to have been unnecessarily detained in custody. A check of this kind is necessary to prevent the irregular and unnecessary detention of persons in custody, and this safeguard is requisite to prevent persons in confinement being overlooked. Instances of such detention have occurred, as I am aware, though not very recently, and it is very desirable that the recurrence of such mistakes should be rendered impossible. A provision of this nature would properly belong to a Code of Criminal Procedure, but it will not be inappropriate in a Bill for the regulation of prisons. It will be expedient also to provide for the payment by Government of the subsistence of persons, other than debtors, who may be directed by competent authority to be detained in a civil jail. The honourable mover of this Bill has admitted its incompleteness, and the Honourable Mr. Chapman has pointed out that the Bill has been drafted without reference to Act 26 of 1870 on a similar subject passed by the Government of India. For the consideration of the points I have indicated, I would propose as an amendment that the Bill be referred back to the Select Committee with a direction to report before the 1st July next. This will enable the Committee to consider the suggestions which have now been thrown out, as well as the recommendations of the Judges of the High Court, more especially those of Mr. Justice West; and will also give time for the Inspector General of Prisons, Dr. Cruickshank, who is now on his way from England, where he has been studying the improvements made in the construction and management of prisons, to give his opinion on the details of the Bill. There is nothing to be gained by hurrying this measure through the Council, and by the further examination I have suggested the measure will be ultimately made more perfect and more useful. I would conclude by observing that no real reform can be effected in Prison management without the appointment to the larger Jails of properly paid Superintendents who can reside either within the precincts of the Prison or in close proximity thereto and devote their whole time to their duties, and without the provision of salaries for Jailors, Accountants, and Warders, which will induce a really respectable class of men to serve in these positions. We have made a few slight improvements in this respect of late years, but much remains to be done; and, with the limited resources of a Provincial Government, I fear that it will take much time to do all that is necessary in the matter of improvement of establishments. Under good management our Jails should be much more productive than they are now, and this way a large portion of the cost of improved establishments may be ultimately met.

The Honourable Mr. ROGERS—With regard to the Honourable Mr. Tucker's proposal, I can only say that the present Select Committee have gone over the Bill very carefully with the Honourable the Advocate-General, by whom every point of law was considered. The sections drafted by the Honourable Mr. Scoble are founded on the very matters referred to by the Honourable Mr. Tucker in the course of his observations.

His Excellency the PRESIDENT—Looking to the remarks which have fallen from the Honourable Mr. Chapman and the Honourable Mr. Tucker, I certainly would be inclined to recommend the Honourable Mr. Rogers to accept the proposal that the Bill should be referred back to the Select Committee.

The Bill is referred back to a Select Committee.

The Honourable Mr. TUCKER's motion was then carried, the Honourable Mr. Rogers only dissenting.

The Honourable Mr. TUCKER moved that the Honourable Messrs. Chapman and Bythell be added to the Select Committee.

The motion was agreed to.

His Excellency the President then adjourned the Council to 8th proximo.

By order of His Excellency the Governor in Council,

J. NUGENT,

Acting Under Secretary to Government.

Bombay, 25th March 1874.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS' ACT, 1861."

The Council met at Bombay on Wednesdsy, the 8th April 1874, at noon.

PRESENT:

His Excellency the Honourable Sir PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*
The Honourable A. ROGERS.
The Honourable the ADVOCATE GENERAL.
The Honourable MUNGULDASS NUTHOOBHOY, C.S.I.
The Honourable Colonel M. K. KENNEDY.
The Honourable NARAYAN VASUDEVJEE.
The Honourable J. K. BYTHELL.
The Honourable F. S. CHAPMAN.

The Report of the Select Committee on the Tramways Bill presented to the Council.

The report of the Select Committee on the Tramways Bill (No. 1 of 1874) was presented to the Council.

Mr. Rogers moves the Second Reading of the Tramways Bill.

The Honourable Mr. ROGERS then moved the Second Reading of Bill No. 1 of 1874 (a Bill to authorise the making of Street Tramways in Bombay). In moving the Second Reading he observed as follows:—I do not require to trouble the Council with many remarks upon the Bill nor upon the amendments made upon it in Select Committee. All I need say is, that with a few exceptions the alterations made in Select Committee were made with a view to bring the Bill more into conformity with the English Act. The Bill as it stood was drawn up by an eminent solicitor in Calcutta on the model of the English and other Tramway Acts, and we felt in Select Committee that we could do very little more than make those alterations we have made, because the grantees had entered into an agreement with the Corporation, with the sanction of Government, and no alterations could be made which would tend to nullify the stipulations in that agreement.

Bill read a second time and considered in detail.

The motion was carried, and the Council proceeded with the consideration of the Bill in detail.

On the suggestion of the Honourable the Advocate-General it was resolved to substitute "road" for "street" throughout the Bill.

In line 22 of Section II. "road" was substituted for "street."

With reference to the second paragraph of Section III., the Honourable Mr. ROGERS said that an alteration was made upon the wording of it by the Select Committee, in order to prevent the Tramway Company from obstructing the laying down of sidings from the Cotton Green to the Apollo Bay Reclamation, but he thought that the words adopted went rather beyond that intention. He wished the section to be amended in order to make the intention of the Council clearer.

The Tramways not to obstruct railways or railway sidings.

After some conversation, the words "without the express permission of Government" in lines 24 and 25 were omitted, and the following words inserted after "Reclamation" in line 23:—"so as to obstruct the said railway or any such siding."

The Honourable Mr. ROGERS—I move that in the last paragraph but one of Section III., for the words "a single track" should be substituted:—"a single or double track as may be approved of by the Municipal Commissioner for the said city and sanctioned by Government." As I have already explained to the Select Committee, if the old words are retained, and it be found expedient hereafter to lay down a double track, it will be necessary to introduce a new Bill for the purpose, which would be extremely undesirable.

His Excellency the PRESIDENT—I have no objection to the alteration. Going outwards from the Pydhonee well towards Abdool Rahmon's stables the road is narrow, and although it subsequently widens, yet in the narrow part it would be very inconvenient to have a double track.

The Honourable Colonel KENNEDY concurred with His Excellency. So convinced was he, after what had been said about the great inconvenience which the tramways were causing in Bombay, that Government will not hastily sanction the laying down of additional tracks, that he had no opposition to offer to the Honourable Mr. Rogers' amendment.

The Honourable Mr. ROGERS mentioned that one end of the street was 33½ feet wide and the other 51 feet, and allowing 14 feet for the space that would be occupied by a double track in the narrow portion, there would still be 9 feet clear on each side of the outer rails at the narrow end.

The amendment was agreed to.

The Honourable Mr. ROGERS had given notice of motion that in the last paragraph of the same section the words "and sanctioned by Government" should be omitted; but, on further consideration, he had resolved to withdraw the amendment.

His Excellency the PRESIDENT mentioned that the grantees had agreed to the retention of these words in the Bill.

The Honourable the ADVOCATE-GENERAL expressed his opinion that it was very desirable that in such a case the sanction of Government should be necessary.

Mr. Chapman withdraws his amendments of which he had given notice.

The Honourable Mr. CHAPMAN said that he had given notice of a series of amendments, to the effect that an officer specially appointed by Government to superintend the working of this Act should do certain things instead of the Municipal Commissioner, but it had been brought to his notice—and he would say there was a good deal of force in the plea—that it might be very hard upon the Tramway Company to have their work under the supervision of two masters, and as he believed on further consideration, that the Municipal Commissioner would see that the Tramway Company carry out their contract properly, he did not wish to pursue his amendments.

The Honourable Colonel KENNEDY—I shall be very glad if the Municipal Commissioner will take great care in seeing that as little inconvenience as possible is caused to the public by these tramways. I feel bound, however, to say, that I do not think he has kept that principle well in view up to the present time. At the end of last month the Kalbadavee road and the road near the Pydhonee well were absolutely dangerous to traffic, and I think if proper pressure had been put upon the grantees by the municipal authorities, some better arrangements might have been made for the public convenience. Rails and sleepers were left lying about, piles of stones were scattered in the way of traffic, and at night the broken-up parts of the road were insufficiently lighted. Judging from the experiences of the past,

I think we are all justified in hoping that the Municipal Commissioner will, as the Honourable Mr. Chapman has remarked, look sharper after the Tramway Company in future.

The section was passed.

Referring to Section VI., the Honourable Mr. ROGERS moved that carriages should, as it stood in the Bill at first, be allowed to extend fourteen inches beyond the wheels. The carriages had been already submitted to the inspection of the Municipal Commissioner, and it was considered that the public safety would be better secured if the width of the step were allowed to be 14 instead of eleven inches, because in this way passengers would have a better footing. The difference of six inches that would be required for each car would not materially affect the traffic of a road. He proposed that in line 11 "fourteen" be substituted for "eleven."

Footways on the tramway carriages to be fourteen inches broad.

The alteration was approved of, and the section agreed to.

Adverting to Section IX. the Honourable the Advocate-General remarked:—I hope we shall never have steam-power introduced upon the tramways, and yet this section apparently permits the Municipal Commissioner to allow the cars to be pulled by other than animal power. To guard against that contingency I think the sanction of Government should be necessary before steam-power is introduced, and I shall move an amendment to that effect. Possibly some good-natured Commissioner might be inclined to allow steam traction engines to be used upon the tramways.

The Advocate-General objects to the possibility of a Municipal Commissioner sanctioning the use of steam power on the tramways, and moves an amendment.

The Honourable Mr. NARAYAN—I would rather have the words "unless with the consent of the said Municipal Commissioner" struck out.

His Excellency the PRESIDENT—That cannot be done, because these words are used in the contract.

The Honourable the ADVOCATE-GENERAL moved that after "Commissioner," in line 5, "and the sanction of Government" should be inserted.

The Honourable Colonel KENNEDY—I certainly support that amendment.

The Honourable Mr. ROGERS—I beg to move that the section remain as it is. By the agreement which has been entered into, the general control of the tramways will be in the hands of the Municipal Commissioner. My honourable and learned friend the Advocate-General has referred to what a good-natured Municipal Commissioner might do, but I should like to see any Municipal Commissioner, however good-natured, who would have the hardihood to allow the tramways to be worked by steam. He is appointed by Government, but he is responsible for the public safety upon the roads, and, under the Municipal Act, he is liable to be removed from his appointment if he does not do his duty. He is under the control of the Town Council and the Corporation—not perhaps with reference to this particular point, but at all events he is under their general control—and I do not see the slightest necessity for Government interfering in the matter. I think the Municipal Commissioner may be perfectly trusted to do what is proper, and, if this motion is carried, we unnecessarily take away from his powers, and shall be flying in the face of the principle upon which we passed the Municipal Act a short time ago. We then allowed the representative principle to be introduced with the idea that the people would be able to take care of

Mr. Rogers opposes the amendment.

themselves; and, as the Municipal Commissioner is to act for the Corporation, we shall simply be hampering him if we agree to these words being inserted.

The Honourable Mr. NARAYAN pointed out to the Honourable Mr. Rogers that by the Municipal Act Government had already power to interfere with the roads. By adopting the Honourable the Advocate-General's motion, the citizens would have an additional safeguard in the matter under discussion.

The Honourable Mr. ROGERS—It is a question whether Government having already sanctioned an agreement, the terms of the contract can be in any way departed from in this Bill.

The Honourable Mr. NARAYAN observed that Government never contemplated that these cars would be worked by steam-engines in Bombay.

The Honourable Mr. ROGERS—Of course not; it is an impossibility.

His Excellency the PRESIDENT—I do not think it would be an impossibility. A Municipal Commissioner might allow steam to be introduced upon the tramways under the impression that it would be very harmless. In Bombay we often see steam-rollers on the roads, and, taking that as a precedent, a Municipal Commissioner might sanction the introduction of steam-power upon the Bombay tramways.

The Honourable Colonel KENNEDY—I do not see why, if such a very vital change is contemplated as traction by steam, Government should not be called in to exercise some sort of influence in the matter. We have already laid down the principle that in certain other less important matters the consent of the Government is necessary.

The Honourable the ADVOCATE-GENERAL—The sanction of Government is necessary for new roads, and I do not see why it should not be also necessary for new motive power. The Honourable Mr. Rogers has answered himself in his own remarks. He contends that the Municipal Commissioner would be unworthy of his office if he allowed steam to be used upon the tramways, but yet that he ought to have that power! I think it necessary that we should have some safeguard in this matter. Many of us know that we seldom go along the Queen's Road without seeing some horse startled by a passing train, even though the train is separated from the road by a fence. How much more dangerous will it be to have steam on the open thoroughfares without any fence to protect frightened horses from rushing among the cars!

The Honourable Mr. BYTHELL—I do not think that such a large power as this should be left to the decision of one man. I also think that the Corporation ought to have the decision of the matter, but as the majority of the Council seem to be in favour of the consent of Government being made requisite, I do not wish to press my views. I would, however, remark that the Corporation are either useless or they are quite competent to manage the traffic of their own roads without Government being called upon to interfere. If they are competent, Government's consent need not be asked; if they are not, then it would be as well to hand over the entire care of the roads to Government.

The Honourable the ADVOCATE-GENERAL—The Municipality have already divested themselves of any power in this matter by handing their interests over to the care of the Municipal Commissioner, and by coming to the present agreement with the grantees. But I think we will be able to get out of any difficulty by adopting the words I have suggested.

The Advocate-General's amendment agreed to.

The Honourable the Advocate-General's motion was carried.

The Honourable Mr. ROGERS moved that at the end of the second paragraph of Section X. the following words should be inserted :— "except in cases of emergency arising from defects in any of the rails or other work and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen." This, he said, would be only reasonable, because as the section stood it would sometimes be practically impossible for the Tramway Company to give the requisite seven days' notice.

Seven days' notice from the Tramways Company to the Corporation in cases of emergency.

The amendment was agreed to.

The Honourable Mr. ROGERS proposed that the third clause should be struck out, as the grantees were already bound by contract to pay Rs. 3,000 a mile per annum for the roads used by the tramways. This was agreed to.

The Honourable Mr. ROGERS, for the same reason as the one given regarding his amendment on the third paragraph of the preceding section, moved the omission of the third paragraph of Section XI.

The motion was carried.

The Honourable Mr. ROGERS moved the omission from line five of Section XII. of the words "with such materials, and," as he was afraid that if they were allowed to stand part of the Bill the Municipal Commissioner if he were unreasonable might insist upon the grantees repairing roads in the most extravagant manner.

The Honourable the ADVOCATE-GENERAL had no objection to the alteration, as he did not believe it would make the slightest difference regarding the power of the Municipal Commisioner, who might order repairs to be made "in such a manner" as he chose, and thus he would have the power to give directions as to materials.

The Honourable Colonel KENNEDY was glad to notice that after all the Honourable Mr. Rogers thought that in certain cases it was necessary to keep the Municipal Commissioner in order.

The amendment was agreed to.

In line 18 of Section XII. the word "roads" was substituted for "streets."

Referring to Section XIII., the Honourable Mr. CHAPMAN repeated his hope that the Municipal Commissioner of Bombay would never conduct his duties in such a way as to lay himself open to the suspicion of desiring to make things easy for the Tramway Company. However enterprising and high principled the present grantees might be known to be, there was no assurance that their successors would be the same, and therefore the Municipal Commissioner had a responsibility attaching to him of a serious nature, to see that whoever possessed the tramways should be compelled to do their duty by the city.

The Honourable Colonel KENNEDY expressed similar views.

In lines 23 and 26 of Section XIV. "road" and "roads" were substituted for "street" and "streets" respectively.

In line 9 of Section XV. also "roads" was substituted for "streets."

Adverting to Section XV., the Honourable Mr. ROGERS said that there was a want of reciprocity in the section which told very much against the Tramway Company.

The Honourable the ADVOCATE-GENERAL agreed with the Honourable Mr. Rogers, and said that as the Municipality had power to call upon the Tramway Company to give

notice of their intention to interfere with the roads used by their tramways, it was only fair that the Municipality and the Gas Company should be compelled to give the Tramway Company notice before they proceeded to disturb the roads and the tramways upon them. He suggested that the words of the English Act should be inserted in Section XV.

The following words were then added to the section :—

1. Provided always that they shall cause as little detriment or inconvenience to the grantees as circumstances admit :

2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency in which cases no notice shall be necessary) give to the grantees notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work.

3. They shall not be liable to pay to the grantees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid.

In line 1 of Section XVII. the word "Marathi" was inserted after "English," and in line 3 "fares" was substituted for "tolls."

In lines 1 and 8 of Section XVIII. the word "fares" was substituted for "tolls."

The Honourable the ADVOCATE-GENERAL proposed that in lines 10 and 11 of Section XIX. "or damages, or destroys any property of the grantees" should be omitted, because this was already met by "mischief" under the Indian Penal Code.

The alteration was agreed to.

The Honourable the ADVOCATE-GENERAL moved the omission of the third paragraph of Section XX. and in the fourth paragraph the words "or to endanger the lives of persons therein or thereon." The Indian Penal Code already embraced the offences referred to in the words proposed to be omitted.

These alterations were agreed to.

In line 14 of Section XXIV. the words "or passengers" were struck out on the suggestion of the Honourable Mr. Rogers, because it was not intended that the Municipal Commissioner should interfere with the timing of passenger carriages.

In line 1 of Section XXVI. the word "fares" was substituted for "tolls," and in line 8 "fare" for "toll."

In line 14 of the Preamble "had" was inserted between "agreement" and "on".

On the suggestion of the Honourable the ADVOCATE-GENERAL, the words "and to regulate the working of" were inserted after the word "making," in the title of the Bill in order to make the objects and scope of the Bill more clear.

Bill read a third time and passed.

After the Bill was considered in detail the standing orders were suspended and the Bill was read a third time and passed.

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

J. NUGENT,

Acting Under Secretary to Government.

Bombay, 8th April 1874.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Monday, the 24th August, at noon.

PRESENT:

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

His Excellency the Honourable SIR AUGUSTUS ALMERIC SPENCER, K.C.B.

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable COLONEL M. K. KENNEDY.

The Honourable J. K. BYTHELL.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHEB VISHVANA'TH NA'RA'YAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

Affirmation of office, &c., taken by Additional Members of Council.

The following gentlemen took the usual affirmation of office and declaration of allegiance to Her Majesty :—

The Honourable Colonel M. K. Kennedy, R.E., the Honourable J. K. Bythell, the Honourable Colonel W. C. Anderson, the Honourable Rao Saheb Vishvanath Narayan Mandlik, the Honourable Nacoda Mahomed Ali Rogay, and the Honourable Khan Bahadoor Pudumjee Pestonjee.

Papers presented to the Council.

The following papers were then presented to the Council :—

Transfer from the Revenue Department (No. 6468 dated 27th November 1873) of papers connected with the Hereditary Offices Bill.

Petition from the Satara Sarvajanik Sabha, regarding the Hereditary Offices Bill.

Petition from the Wuttundars of the Kaladgi District, dated 3rd April 1874—praying that either the Hereditary Offices' Bill be withdrawn or certain necessary amendments be made therein.

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Boiler Inspection Bill."

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Bombay District Municipal Bill."

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Bombay Salt Bill."

Letter from the Secretary to the Government of India, returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of "The Bombay Tramways Bill."

Letter from the Secretary to the Government of India, stating that His Excellency the Viceroy and Governor General regrets that he feels it his duty to withhold his assent from the "Bill for the regulation of Burial-grounds and Burning-grounds and places for the exposure of the Dead," and, in accordance with the requirements of Section 40 of the Indian Councils Act, signifies the reasons which have led His Excellency to withhold his assent.

His Excellency the President's observations relating to the Hereditary Offices Bill.

Before resuming the consideration of the Hereditary Offices Bill, His Excellency the PRESIDENT observed as follows:—We now proceed to the first order of the day, namely, the resumption of the consideration in detail of Bill No. 12 of 1873—a "Bill to amend the law relating to Hereditary Offices." I may briefly state, for the information of the new members of Council, that this Bill underwent a most prolonged examination in the course of last year by the Council both here and at Bombay, and it was agreed that in the form in which it ultimately left the Council on the last occasion, it should be circulated as extensively as possible throughout the country with the view of eliciting opinions and advice upon the various important points involved in it. The opinions received have now been printed. The last step taken on the part of the Government was the circulation of various amendments, which, after a careful examination of the suggestions and remarks made by various gentlemen, the Executive Government think it their duty to submit for the consideration of the Council, and adoption if possible. We shall consider the objections set up in the various petitions as we proceed with the consideration of the Bill. I may, however, mention that the Ahmedabad petitioners seem to object to the whole Bill. They request that the Bill be not allowed to pass into law, and that it be rejected or postponed until its contents are made known and understood by the rural population whom its provisions will effect. I do not think the Government could have taken more trouble than they have taken to disseminate the proposals of this Bill over the country, and to endeavour to make the rural population comprehend how it will affect them in their social rights.

The Honourable Mr. GIBBS concurred with His Excellency the President, and considered that if the Bill were postponed until the desire of the Ahmedabad petitioners were accomplished, it might wait until the "Greek Kalends" or any similar period.

In reply to the Honourable Khan Bahadoor, His Excellency the PRESIDENT said that the last translation of the Bill was circulated six months ago. His own opinion was that, in consequence of the different customs prevalent throughout the Presidency, it would be impossible to make the rural population understand it thoroughly. Already every pains had been taken to remove provisions which might press heavily upon the native population.

The Hereditary Offices Bill reconsidered.

The Council then resumed consideration of the Bill (No. 12 of 1873).

The Honourable Mr. ROGERS proposed that the following words be added to Section 1, Clause 2, after the word "otherwise" :—"So far as its provisions shall not conflict with the terms on which any such alienated village may have been secured to the holder thereof." Originally the section simply declared that the Bill was to extend to the Regulation Districts and to all villages therein, whether alienated or otherwise; but as a great many objections were raised by the different local officers to the effect that the tenure on which alienated villages were held might be interfered with, the above amendment had been prepared. By adopting it, alienated lands allotted for service in a village would in no way be interfered with. He also proposed to add the following paragraph to the first section :—"Nothing in this Act shall affect the powers of Government to deal with any wuttun or parts of wuttuns, or with the profits thereof respectively under Act No. XI. of 1852 or Bombay Acts Nos. II. and VII. of 1863, or any other law at present in force with respect thereto." The reason for proposing this amendment was that in the Acts quoted certain powers were retained by Government, and these acts were not meant to be interfered with by the present enactment.

The amendments were agreed to.

Referring to Section IV., His Excellency the PRESIDENT said the Ahmedabad petitioners objected to the illustration given in the section as very objectionable. He therefore proposed that it should be struck out.

The amendment was agreed to.

The definition of wuttun to include the right to levy customary fees or perquisites.

The Honourable Mr. ROGERS then moved that the following words be added after the word "office" in line 8—"It (*i.e.* the definition of 'hereditary office') includes a right to levy customary fees or perquisites in money or in kind at fixed times or otherwise. It includes cash payments in addition to the original wuttun property made voluntarily by Government and subject periodically to modification of withdrawal." In different parts of the country it was the custom to levy fees and perquisites for service in various ways, sometimes in money and sometimes in kind. Therefore, in order to provide for that custom, the first part of the proposed amendment was necessary. The second part of the amendment related to cash emoluments allowed by Government for the remuneration of patells and other officers in villages where the value of the original wuttun could not be regarded as a sufficient remuneration for the proper performance of their duties. He begged also to propose that the words "if any" be inserted between the words "property" and "and" in line 22; that the following words be inserted after the word "wuttun" in line 26—"It" (*i.e.*, the definition of wuttundar) "includes a person holding wuttun property acquired by him before the introduction of the British Government into the locality of the wuttun, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance"; also that the following words be inserted after the word "wuttun" in line 28—"subject to the conditions hereinafter specified"; that the words from "provided" to "person" in lines 28 to 37 be omitted; that the words "'or ghur' means" in line 38 be omitted, and the word "includes" be inserted in their stead; that the word "an" be substituted for the word "the" at the end of line 39; that the words in the Proviso at lines 40 to 42 be omitted and the following substituted :—"Provided that no sub-division shall be recognized except as hereinafter provided in Section XXIII."; that the words "means the eldest existing representative of

a family," in lines 43 and 44, be omitted, and the words " includes the chief representative of each branch of a family" be inserted in their stead; and that the following words be added at the end of the section:—"'Guardian' includes a relation or other person to whom the care, nurture, or custody of any child falls by natural right or recognized usage, or who has accepted or assumed directly the care, nurture, or custody of any child." In the course of the inquiries made in regard to the Bill, many objections had been made in different parts of the country with regard to the alleged intention of Government to interfere with adoptions, and accordingly it was decided to do away with any necessity of obtaining the sanction of Government in cases where an adoption has already taken place. By the amendments which I have just read the Council will see that the future regarding adoptions is also provided for. As to the word "ghur" it is omitted, because, though it is used in the Deccan, it is not known in Guzerat or in the Southern Mahratta Country. As to the amendment regarding the word "and," I may explain that there are many wuttuns in which the wuttundars are not descended from one original wuttundar. In the Deccan there are tucksheems of wuttuns in which the holders originally sprang from different families altogether. As the section stood originally it only related to one branch of wuttundars in a wuttun, but by the amendment it would apply to the various branches. As to the remaining amendments, the section as it stood originally laid it down that no sub-division recognized within the last thirty years should be taken into account. That was objected to in a great many quarters, and after due consideration the Executive Government thought the objections were reasonable, and therefore, as would be seen when Section 23 was reached, considerable alterations had been made in favour of the sub-divisions which are already permitted under the rules of the Bombay Government. As to the definition of "guardian," it had been taken from the Bombay Municipal Act.

The right of free adoption not to be interfered with, though all adoptions must be reported to Government.

Sub-divisions of wuttuns made within the last thirty years may be recognized.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I would suggest that this section, or at all events that part of it which relates to representative wuttundars, may be kept over for future consideration until the Council decides upon rotation, and as to whether lists are to be permanently fixed for all shareholders, or whether, where there are several sharers in a wuttun, only one of them is to be elected according to the principle laid down in Act XI. of 1843. I may say that I am glad the Executive Government have decided to abandon the section interfering with the right of adoption, which was never intended by the Hindoo Law to be vested in Government. Government will receive the approbation of the whole country upon this point.

Consideration of the definition of "representative wuttundar" postponed.

His Excellency the PRESIDENT observed that all that wuttundars had to do now was to report adoptions.

The Honourable RAO SAHEB—That is quite right. Reporting adoptions is an old institution of the country, because it was a rule that they should always be reported to the Rajah or head of the village.

The Council agreed to postpone consideration of the paragraph defining "representative wuttundar." The remaining amendments proposed by the Honourable Mr. Rogers were agreed to.

The Honourable Mr. ROGERS moved that the words "or interest" be inserted between the words "thereof" and "to" in line 6 of Section V.

The Honourable Khan Bahadoor PADAMJI PESTONJI asked whether Collectors are to be the persons who are to decide whether the person proposing to purchase a share in a wuttun is a wuttundar.

His Excellency the PRESIDENT replied in the affirmative.

The amendment was agreed to.

The Honourable Mr. ROGERS moved that the following section be added after Section V.:—

"*Clause* I.—In any case in which it shall appear to the Collector that the institution of legal proceedings is requisite or desirable with respect to any wuttun or the estate, property, funds or affairs thereof, the Collector shall certify such case in writing under his hand to the Revenue Commissioner together with such statements and particulars as in his opinion may be requisite or proper for the explanation of such case; and thereupon the said Revenue Commissioner, if upon consideration of the circumstances he thinks fit, shall authorize the Collector to institute and prosecute, in the name of the Collector, such legal proceedings as may be requisite or proper for the protection of the wuttun, its estates, property, funds, or affairs, by suit or petition in the District Court. The cost of such proceedings, unless recovered from the opposite party, shall be paid out of the funds of the wuttun.

The Collector may, under certain conditions, institute legal proceedings for the protection of a wuttun.

"*Clause* II.—The Collector may, if he thinks fit, proceed as provided in Sections VIII., IX., X., or XL of this Act in lieu of instituting or prosecuting legal proceedings under this section."

The honourable member explained that the object of this section was to provide for cases in which there might be any particular complication in consequence of the alienation of the wuttun or any part of it before the coming into force of the Bill under consideration. There might occur cases in which wuttundars combined to defeat the objects of Government, and to these this section would apply.

His Excellency the PRESIDENT approved of the section and remarked that Government had a distinct interest in keeping every wuttun in an efficient state.

The Honourable Rao Saheb VISHVANATH NARAYAN thought there was a consensus of opinion that some means should be devised to regulate the sale of Wuttuns. Regulation XVI. laid it down that no wuttun should be sold or alienated in any way, and if a branch of the wuttundars died out their interest in the wuttun reverted to the other branches. His own opinion was that each wuttundar should have control only over his own life-interest in the wuttun, and that not even with the sanction of Government should any sale or alienation of a wuttun be permitted.

The Honourable Colonel ANDERSON—There could be no reasonable objection to consolidating a wuttun by permitting a bankrupt shareholder to sell his interest in the wuttun to another shareholder in the same wuttun.

The Honourable the ADVOCATE GENERAL—I suppose the intention of Government is to prevent hereditary shareholders and their portions of wuttuns from getting hopelessly into the hands of Marwarees or sowcars.

The Honourable Mr. ROGERS concurred.

The new section was adopted.

The Honourable Mr. ROGERS then moved that the following sections be substituted for Sections VII., VIII., IX., and X.:—"Whenever any wuttun or part or profits thereof, whether assigned as remuneration of an officiator or not, has before the date of this Act coming into force passed by decree of any Court into the ownership or beneficial possession of any person other than the officiator for the time being; or has before such date passed otherwise than by decree of any Court into the ownership or beneficial possession of a wuttundar other than such officiator; or when any wuttun, or part or profits thereof, not being assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed, by decree of any Court or otherwise into the ownership or beneficial possession of a wuttundar other than such officiator; such wuttun or part or profits thereof shall be liable to contribution for the remuneration of such officiator in like manner and to the like extent as if no such decree had been passed or no such transaction had taken place."

A wuttun always to be liable to contribute towards the remuneration of the officiator in the wuttun.

Clause I.—"Whenever any wuttun, or part or profits thereof, whether assigned as remuneration of an officiator or not, has, before the date of this Act coming into force, passed otherwise than by decree of any Court, and without the consent of the Collector and transfer of ownership in the Revenue records, into the ownership or beneficial possession of any person not a wuttundar of the same wuttun, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such wuttun, or part or profits thereof, shall from the date of such order belong to the wuttundar previously entitled thereto and may recover and pay to such wuttundar any profits thereof accordingly."

A wuttun not to be alienated to persons not belonging to the same watan.

Clause II.—"If such part of a wuttun be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered shall be considered as the profits."

"When it shall appear to the Collector that by decree of any Court any wuttun, or any part or profits thereof, recorded as such in the Revenue records or registered under this Act, and assigned as remuneration of an officiator, has, after the date of this Act coming into force, passed without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such wuttun, or part or profits thereof, not so assigned has so passed into the ownership or beneficial possession of any person not a wuttundar of the same wuttun, the Court shall, on receipt of a certificate under the hand and seal of the Collector that such alienation has been decreed, remove any attachment or other process placed on the said wuttun, or part or profits thereof, and set aside any sale or order of sale or transfer thereof."

"When any alienation of the nature described in Section X. of this Act shall have taken place otherwise than by decree of any Court, the Collector shall, after recording his reasons in writing, declare such alienation to be null and void and shall either summarily

resume possession of such property, or assess it at the rate prescribed in Section IX., Clause 2 of this Act, as he may think fit, and it shall thenceforward revert to the wuttun."

The Honourable Mr. GIBBS remarked that by these sections it was apparently intended to legalise a certain amount of illegality which Courts had committed, because the former law distinctly was that no wuttun should be alienable.

His Excellency the PRESIDENT—These sections were framed after the Executive Government had a long discussion with the Collectors assembled at Poona, and I am certain that these gentlemen made a complete distinction between alienations made before the law came into operation and alienations afterwards. Now, however, this distinction seems to have been lost sight of, and alienations made after this Act is passed are to be put upon the same favourable footing as alienations made twenty or thirty years ago.

The Honourable Mr. ROGERS—The reason is that we are making provision for wuttuns which do not pass out of the hands of members of the same family of wuttundars, and drawing a clear distinction between such cases and others in which the emoluments would pass into the hands of strangers.

The amendment was agreed to.

The Honourable Mr. GIBBS thought that some provision must be made to provide for the transfer of the possession of land. It might be declared that in this case the Collector's order should be equivalent to the decree of a Court.

A Collector's order to be equivalent to the decree of a court.

The Honourable the ADVOCATE General suggested that the following section be added as the last of the sections which had just been agreed to on the motion of the Honourable Mr. Rogers :—

Clause 3.—"Any order of a Collector made under this section, or Sections 9 and 11 of this Act, shall have the force of and may be executed in the same manner as a decree of a civil court."

The amendment was agreed to.

Certain petitioners object to the right of Government to amalgamate wuttuns and thus possibly deprive wuttundars of their right to serve in consequence of their wuttun being absorbed in another wuttun.

His Excellency the PRESIDENT said that Section XII. was characterised by the Ahmedabad petitioners as a most objectionable and injurious one. Hereditary officers, they contended, could not be treated as if they were merely stipendiary. If the section were agreed to, it would, in the opinion of the petitioners, extinguish many hereditary officers. Wuttun offices were held from time immemorial, and the holders had their rights and position formed by the usages of the country as well as by enactments. Under the British Government they had received no privileges as wuttundars which they did not possess before, and there was no law to authorise the adoption of a measure which might have the effect of extinguishing wuttuns. In the opinion of the petitioners the British Government, if they desired village services to be efficiently performed, should increase the emoluments of wuttundars instead of depriving them of their hereditary offices. If Government could not do this, then they ought to leave the wuttundars alone. These were the main contentions of the petitioners.

The Honourable Mr. ROGERS—I have already explained several times the chief object for which this section was drafted. An order was issued some time ago to provide for cases in which the wuttun lands of different villages were mixed together in consequence of the

villages themselves being amalgamated. Although the wuttuns were combined, the rights of those holding the different wuttuns were preserved by giving them rights in the new village in proportion to those they enjoyed before the combination of the wuttun properties.

The Honourable Mr. GIBBS remarked that in joining certain villages and wuttuns a great administrative improvement would be secured. If by amalgamating certain villages a suitable remuneration for an efficient officiator could be secured, he thought it would be right to make that amalgamation.

The Honourable Rao Saheb VISHVANATH NARAYAN—The honourable gentleman forgets that amalgamation of wuttuns will be depriving certain families of their rights as wuttundars.

The Honourable Mr. GIBBS—All the families concerned in the wuttuns will have their chance of service by rotation.

Consideration of the section postponed.

The Honourable RAO SAHEB submitted that the consideration of the section ought to be postponed.

This was agreed to.

The Honourable Mr. ROGERS moved the following amendments in Section XIII: In lines 3 and 8 of Clause 1 of Section XIII., for the word "holders" read "holder."; for line 5 in the same clause, for the words "them and their heirs in perpetuity" read "him and his heirs and successors in perpetuity."; in line 7 after the word "conditions," the following words be inserted—"whether consistent with the provisions of this Act or not"; in Clause 3 of Section XIII. the words "or holders" and "or their" be omitted.

His Excellency the PRESIDENT mentioned that the Ahmedabad petitioners objected to this section, because they held it would be unfair to allow settlements between a Collector and a wuttundar with respect to commutation of service to be made on any account whatever.

The Honourable Mr. GIBBS—Ten out of the twelve collectorates of the Presidency have already been settled as regards District service wuttuns and the same work in the other two collectorates is very nearly finished. This section is merely to confirm what has already been done, and to enable other wuttundars to part company with Government if they desire it.

The amendments were agreed to.

The Honourable Mr. ROGERS proposed that the following section be added after Section XIII.:—

"Nothing in this Act shall be held to affect any rights of individuals or village communities to exact such service as may be customary from village servants whose wuttuns were originally granted or are now held for the performance of such service, but who have been relieved by Government of liability to perform such service to the State."

Villagers may exact their customary rights as to service from wuttundars.

The honourable member explained that many of the hereditary village officers perform a dual kind of service—partly to the State and partly to the village community. For instance, the barber is supposed to shave the people, and also, on occasions when a robbery has taken place and the footsteps of the robbers have to be tracked, to be present on the occasion with

a torch to lead the way if that is necessary. The carpenter is supposed to mend the carts of the villagers besides doing certain Government work. In such cases Government will relieve the wuttundars from service, but they are not in any way exempted from their liability to serve the village community.

The amendment was agreed to.

The Honourable Mr. ROGERS moved that in lines 1 and 2 of Section XIV., for the words "a wuttun property or part thereof," read "all or any of the property of a wuttun"; that the word "determine" be substituted for the word "assess" in line 9 of Section XIV., and the words "in assessing such payments no larger amount shall be paid than" in lines 11 and 12 of the same section be omitted and the words "no larger demand shall be made than one equivalent to the amount that" inserted in their stead.

The Honourable RAO SAHEB mentioned that the Poona Survajanik Subha complained that this section would interfere with the rights of Jaghirdars, Inamdars, and Mewasi Chiefs.

The Honourable Mr. CHAPMAN considered that the objections made by the Poona Subha were already met by the amendment which had been made on Section I.

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the word "village" be inserted between the words "a" and "wuttun" in line 2 of Section XV. He said that in the course of previous discussions on this section an objection was raised that it gave power to Punchayets to settle what villages were to pay to the belotadars, but did not give power to the Punchayet to settle what the belotadars were to do in exchange for that payment; but by alterations now made that matter was provided for.

His Excellency the PRESIDENT—The Ahmedabad petitioners object to the Collector interfering in this matter at all.

The Honourable Mr. ROGERS—There are peculiar cases in the Deccan which render it necessary that something of this kind should be done. Mhars, for instance, are very strongly suspected of poisoning cattle in a great many parts of the country; and the best way we considered to settle the disputes which led to such crimes being committed was to order a Punchayet to assemble and decide among the disputants.

The Honourable Rao Saheb VISHVANATH NARAYAN mentioned that the Poona Subha considered that this section, if it contemplated the regulation of the payment to be made for services done by village officers, would be unnecessary interference with the old arrangements between landlords and servants, and probably inflict hardships upon the ryots.

The payment of minor watandars must be secured.

The Honourable Mr. CHAPMAN—This is really one of the most important sections in the Bill, as the whole system of village administration may be said to depend upon it. Some means must be adopted whereby the payment of village officers will be secured. Mhars, village watchmen, &c., are essential to the comfort and well-being of villages, and unless they get their proper remuneration it would be quite hopeless to expect proper services from them. All we say in this section is that the rights of these people will be maintained. We want a prompt remedy by which the half-naked Mhars and others may get their rights, and do in return the services which their wuttun has for

generations past entailed upon them. Looking at the system of police administration in this country we could not get on without Mhars, whose obligations are of such a minute character that it would be impossible to expect a Collector to say what they are, although they are perfectly well-known to the country side, and the reason why we wish the Punchayet to be established is that they may arrange these matters.

The Honourable the ADVOCATE GENERAL—The only difficulty I see about this section is that it contains nothing about how the decisions of Punchayets are to be enforced. Supposing a Punchayet passes a decision, and the wuttundar refuses to accept it, what is to be done?

The Honourable Mr. CHAPMAN—For such cases there is full power in the Bill to confiscate a wuttun. Moreover, the Punchayet may withhold remuneration in certain cases. For instance, if much grain were stolen frequently, and the thief could not be found out, the Punchayet might refuse to pay the Mhar on the ground that he was not performing the duties attached to his wuttun.

The Honourable RAO SAHEB—Certain duties and responsibilities devolve upon the Mhars, and surely something must be exacted from them as well as from the people who must pay them.

The Honourable Mr. CHAPMAN—We must leave the section indefinite to a certain extent. We cannot go into minute particulars about what the Collector must make the Mhars do.

The Honourable Mr. ROGERS—From some of the observations made, it seems to be expected that if this section is passed the Collector will immediately proceed to inquire closely into the performance of the duties of all wuttuns. If this is the case, perhaps something might be introduced in the Bill to suit the views of those honourable members who entertain such fears and to prevent such unnecessary interference.

The Honourable Mr. CHAPMAN—It is the desire of Government that Collectors should not interfere too closely with existing village arrangements. I believe that Government will take care to inform Civils Officers of this particular desire.

The Honourable Mr. GIBBS remarked that the general instructions of Government to its servants on this point would be on the principle *quieta non moveri*.

After some further discussion the amendment was agreed to.

In line 6, between the words "Collector" and "to," "on the application of any person interested" was inserted.

The Honourable Mr. ROGERS moved that the word "determine" be substituted for the word "assess" in line 9 of Section XVI.

The amendment was agreed to.

The Honourable Mr. ROGERS moved that in line 7 of Section XVII. for the word "of" read "duly authorized by."

The amendment was agreed to.

The Honourable Mr. ROGERS moved that the following words be inserted after the word "Government" in line 15 of Section XIX.—"or when the right of any particular

family to hold a wuttun does not exist or is not established." Also that the illustration to Section XIX. in lines 20 to 27 be omitted.

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the following words be added after the word "value" in line 17 of Section XX.—"Such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the wuttun."

The amendment was agreed to.

Consideration of Section XXI. was postponed.

In line 2 of Section XXII. the words "as hereinafter provided the custom of the watan as to service and" were inserted after the words "determine," and the words "as hereinafter provided" in line 7 omitted.

The Honourable RAO SAHEB, before stating his views upon the definition of rotation wuttundar, called attention to Section XXIII., in which it was stated that in determining what heads of families shall be recognised as representative wuttundars, and what is the custom of the wuttun as to service, the Collector must be guided by the practice observed during a period of not less than thirty years before the date of this Act coming into force.

Mr. Chapman contends that holders of fractions of a wuttun ought not to be registered for certain practical reasons.

The Honourable Mr. CHAPMAN—Before the honourable member proceeds further I would draw his attention to the amendment on Section 23 of which notice has been given. Instead of the Collector being bound to examine the custom for only thirty years preceding the introduction of this Act, it is proposed that he shall take into consideration the practice observed "from the earliest period for which there are records or other evidence available, provided that he shall not be bound to recognise appointments or sub-divisions which have been made subsequently to the introduction of Act XI. of 1843, and which he considers to be contrary to the custom of the wuttun." As the framer of that amendment, I may perhaps be permitted to make a few remarks in explanation of it, and for the purpose of facilitating discussion on the subject. I agree with the Honourable Rao Saheb in looking upon this as one of the most important sections in the Bill. I also think it is no exaggeration to say, that had registers been prepared in the first instance we would have none of the difficulties which we have now to deal with. In fact it is the absence of proper registers which has created these difficulties, inasmuch as the whole question of service by rotation hinges upon proper registers. Any one who has studied the history of this matter will have found the greatest difference of opinion respecting the question of service by rotation. As regards kool-kurnies there is no doubt that rotation has existed from of old, but as regards patels there is a wide difference of opinion entertained by Revenue Officers as to whether it is not an innovation. Mr. Vibart, the sole Revenue Commissioner, when drafting Act XI. of 1843, distinctly provided for frequent rotation; on the other hand, Mr. J. Nugent Rose, who was, perhaps, the highest authority on Mahratta customs, was decidedly of a contrary opinion in respect to patels. I have discussed these different opinions very frequently with native gentlemen, and when I mentioned Mr. Rose's name they have said: "Oh, it was all very well for Mr. Rose to entertain that opinion, but we are given to understand that Mr. Rose was himself a wuttundar in Scotland; and, of course, he upheld

the 'Wateel or primogeniture' theory." My own impression, looking to the past history of the matter, is that it was very much a case of the strongest and most influential man getting the post of officiator. When Act XI. of 1843 was enacted rotation was recognized, but unfortunately no provision for preserving proper registers of shareholders was made. The result has been deplorable. The omission has given rise to a most corrupt scramble amongst all parties to obtain office. There was no authoritative list from which the nominating officer could make his selection. The consequence was that intrigue, bribery, and corruption were rife amongst all the offices, from the Mamlutdar's up to the Revenue Commissioner's. I believe I am correct in saying that the great object of the Bill now before us is to amend and simplify the manner in which these appointments are made. With a view to checking these evils, Government, as far back as 1866, issued executive orders for the preparation of registers and regarding the manner in which appointments were to be made. We have now to consider, first, how far the registers already prepared in conformity with the orders issued by Government in 1866 are to be upheld, and in the next place how far it is advisable in making new registers where no registers at all have been prepared, to interfere with past practices. This is a most difficult matter to deal with, and the amendment now on the paper is, I think, as satisfactory a way of meeting it as can be devised. I will first deal with the case of registers that have been prepared subsequent to 1866, and in doing so must draw attention to the amendment to Section 63. Honourable members, after looking at that clause, will see that we have done all in our power to prevent unnecessary interference with registers already prepared by responsible officers after the parties have had an opportunity of appearing before them and advancing their claims. I do hope that the officers to whom the working of this Act will be entrusted will be very chary in interfering with the past, and restrain that craving after uniformity, which is to my mind the most unpleasant and I believe unpopular feature, in our administration. Knowing as I do how keenly these rights are contested, I think it is better that some differences of system should remain than that old squables once set at rest should be revived. I will now turn to the second part—namely, the preparation of new registers where none now exist. We find that there has been the greatest diversity in the way in which the orders of 1866 have been attended to in different collectorates. In some collectorates —notably Poona, Nasik and Dharwar—the orders issued by Government in 1866 have been most carefully attended to. In other collectorates, especially Khandesh and throughout Guzerat, I believe little attention has been paid to the orders, and no new registers have been prepared. The officers in these collectorates will therefore have to deal with this matter *de novo*, and I repeat the hope that they will endeavour to interfere as little as possible with the customs of wuttuns. The words of the amendment are wide and elastic. I trust that the effect of it will be that only the names of men who by intrigue and improper means have found their way into existing registers will be eliminated, that this power of elimination will be carefully and guardedly exercised, and that the names of all who by custom and usage are entitled to the privilege will be retained. I believe that the local Government will enjoin the greatest possible care on the part of officers. I have now, I hope, sufficiently explained the object of these registers. I can assure the Council that these amendments have been discussed in the most unreserved and careful manner by every officer whose opinion is of the slightest weight, and we have come to the conclusion that the present is an equitable and practical way of dealing with a most difficult and embarrassing subject.

The Honourable Rao Saheb VISHVANATH NARAYAN—I have listened carefully to the remarks of the Honourable Mr. Chapman, but still I think that we ought to postpone the consideration of this section until we agree whether the representative wuttundar who is to officiate must really be the head of a family of wuttundars. Under the present systems of Mahomedan and Hindoo law, all members of families of wuttundars have equal rights, and Act XI. of 1843, if it did no other service, laid it down that if all members of families of wuttundars could not act as wuttundars at one and the same time, they at all events had the right of voting who among them should perform the duties of the wuttun. Here such option is not left : a man must be the head of the family of wuttundars or he cannot officiate. It is true that it is stated in Section XXIII. that the Collector in determining "what heads of families shall be recognised as representative wuttundars" must look to the "custom of the wuttun as to service and take into consideration the practice heretofore observed" during a certain period. But I do not think these words are wide enough to allow of the elective principle being carried out whenever the members of a particular family of wuttundars or groups of families in a particular wuttun have hitherto enjoyed the right of electing representatives. If it is declared distinctly that they shall still be allowed to exercise this privilege under these sections, I will have no objection to them, but I would respectfully put it to the Honourable Mr. Chapman that the rights of minor wuttundars should not be entirely extinguished. Formerly the ablest wuttundar in families of wuttundars could have his abilities recognised and be elected as their representative; but now it is proposed, though making a scheme simple no doubt, to deprive the villages or the State of being served by the best man available.

Rao Saheb Vishvanath Narayan contends that all wuttundars having equal rights, therefore fractional wuttundars ought to be represented in the service of a wuttun.

The Honourable Mr. CHAPMAN—To do what the Honourable Rao Saheb contends for we must first, as it were, have an electoral college. We must have a full register of voters. But if we agree to such a system we leave the door open, as formerly, to every sort of intrigue and difficulty. We now wish once for all to have a trustworthy register of qualified wuttundars prepared and if it is said that there must be an elective franchise amongst all sorts of wuttundars, whether principal or minor, I submit that we shall never be able to get rid of interminable confusion. If the name of every wuttundar is registered indiscriminately, whether he is a representative man or not, it stands to reason that we cannot escape from having as unsatisfactory a condition of matters in the future as we have had in the past.

The Honourable RAO SAHEB—Will the junior members of families be allowed to get their names on the register at all?

The Honourable Mr. CHAPMAN—No. Supposing a Hindoo died, leaving four sons we would only recognise and register the eldest. This we take to be the simplest mode of dealing with our present difficulties. If the Honourable Rao Saheb or any other gentleman can suggest a more practical way of improving the administration of villages, the Executive Government will, I am sure, be happy to adopt it.

The Honourable RAO SAHEB—Can we not leave respectable wuttundars themselves to elect an officiator? The question is, who is to get his name on the register? I want to secure for the subordinate wuttundars some share in the election of the representative wuttundar, whoever he may be.

His Excellency the PRESIDENT—Instead of the Collector saying, " I take this man to be the representative wuttundar," the Honourable Member wishes families to have the power of saying, " So-and-so is the man we want ?

The Honourable RAO SAHEB concurred.

The Honourable Mr. CHAPMAN—I quite admit that the Rao Saheb's theory is excellent, but there are so many practical difficulties that it could not be carried out.

The Honourable the ADVOCATE GENERAL—If the ancient custom of the wuttun has been that all the families in the wuttun shall elect their own representative, I presume the Collector will adhere to that custom. In fact, where there is no electoral college one will not be created ; but where there is one, it will be recognised.

The Honourable Mr. ROGERS—It is not meant to recognise that custom at all.

The Honourable RAO SAHEB—Under Act XI. of 1843 the Collector could only elect a representative in those cases where, the wuttundars having the right to elect a representative, they could not agree to be unanimous. There is a great deal to be said against the system of unanimity, and I believe if we could get a system of majorities it would do very well.

The Honourable Mr. CHAPMAN—We must endeavour to narrow the number of electoral wuttundars by this Bill, and if we do not start with a more simple style of register than we have had hitherto we shall have a repetition of all the old evils.

The Honourable Mr. GIBBS—Suppose a wuttun in which there are two shares worth 4 annas each, and another worth 8 annas which is sub-divided among 50 people, surely it would be absurd to register the names of those 50 sharers in the 8 annas share of the wuttun.

The Honourable RAO SAHEB—I would give a vote to every anna share in a wuttun.

The Honourable Mr. CHAPMAN—That would be impracticable, and we would simply be re-opening the old fields of khutput and bribery. It would surely be safer to accept the broad principle upon which we proceed, that no arrangements entered into subsequent to the passing of Act XI. of 1843 are to be recognised. That will enable us to get rid of a great many of the objectionable sub-divisions which have sprung up of late years.

The officiating wuttundar need not necessarily be the " head of a family." Sections IV. and XXIII. altered accordingly.

The Honourable the ADVOCATE-GENERAL suggested that the words " head of a family " should be omitted from Section IV. and XXIII so as to show that the officiating wuttundar need not necessarily be the head of a family.

After some discussion the Honourable RAO SAHEB expressed his concurrence with the Honourable the Advocate-General's proposition.

Section IV. was then reverted to, and in the definition of " representative wuttundar " the words " head of a family " were struck out.

Referring back to Section XXII. the Honourable the ADVOCATE-GENERAL asked whether if infinitesimal tuksheems existed before 1843, it was intended to interfere with them.

The Honourable Mr. CHAPMAN replied in the negative.

The Honourable Mr. ROGERS moved that the words " take into consideration " in line 7 of Section XXIII. be omitted and the words "inquire into" inserted in their stead ; and that the remainder of the section after the word " observed " in line 8 be omitted and the

following words substituted :—" From the earliest period for which there are records or other evidence available, provided that he shall not be bound to recognise appointments or sub-divisions which have been made subsequently to the introduction of Act XI. of 1843 and which he considers to be contrary to the custom of the wuttun."

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the illustration (from lines 10 to 23) in Section XXIV. be omitted.

The amendment was agreed to.

The Honourable Mr. ROGERS moved that the illustrations to Section XXVI. from lines 14 to 43 be omitted ; that the following words be added at the end of Section XXVI. :—" Except that in cases where such several families are not descended from a common ancestor the Collector shall register as representative wuttundars the heads of such families and establish the practice of service in successive periods."

The amendments were agreed to.

In lines 6 and 7 " for thirty years or more " was struck out and " at the date of the introdnction of Act No. XI. of 1843" substituted.

The Honourable Mr. ROGERS moved that the following section be added after Section XXVI. :—" When the custom of service in successive periods has been introduced in consequence of the reduction in the number of sharers or the amalgamation of wuttuns by Government, the head of each family that formerly officiated shall be separately entered as a representative wuttundar."

The amendment was agreed to.

The whole section was then passed as amended.

The Honourable Mr. ROGERS moved that the following sections be added after Section XXVIII. :—

" In any case in which before the coming of this Act into force any registered wuttundar shall have adopted an heir, notice of the same shall, within twelve months from the coming into force of this Act, be given by or on behalf of such adopted heir to the Collector, who shall register the name of such heir accordingly. But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register."

Registered wuttundars to give notice to the Collector of their having adopted an heir.

" In any case in which after the coming of this Act into force any registered wuttundar shall adopt an heir, report of such adoption shall within three months be made to the Collector by such wuttundar, or by such adopted heir or by the guardian of the latter, and the Collector shall register the name of such heir accordingly. But if such adoption shall subsequently be set aside by decree of a competent Court, the Collector shall remove such name from the register. In any case in which report of such adoption shall not be made as herein directed, the Collector shall not recognize the same without the production of a certificate of heirship granted by a competent Court."

The new sections were agreed to.

In line 4 of Section XXIX. " and" was substituted for " or." The illustration was omitted.

In line 1 of Section XXX. the words "head of a family or" were inserted after the word "any" and in the same section the word "his" was substituted for "the" in line 4, and the words "of the minor" in lines 4 and 5 struck out.

The Honourable Mr. ROGERS moved that for the words "for not less than ten years" in line 12 of Section XXXI. the following words should be substituted :—"the period for a patel shall not be less than ten years and for a koolkurnee not less than five years."

The Honourable KHAN BAHADOOR PADAMJI PESTONJI was of opinion that patels and koolkurnies should be elected for the same period, five years. If it would injure the public service to remove a patel at the end of five years he might be re-elected for another term.

The Honourable Mr. ROGERS' amendments were agreed to, and the Honourable Khan Bahadoor did not press his expression of opinion.

The Honourable Mr. ROGERS moved that the words "subject to the provisions of Par VIII. of this Act" be inserted after the words "his heir shall" in line 5 of Section XXXII

This was agreed to.

After some discussion Section XXXIII. was altered to read as follows :—"Every representative wuttundar whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, unless permitted by the Collector to appoint a deputy."

The Honourable Mr. ROGERS moved that the following words be added to Section XXXIV. :—"or may direct service in successive periods by representative wuttundars who have hitherto served, or are serving, contemporaneously."

The amendment was agreed to.

In lines 3 and 4 of Section XXXVI. the words "wuttundar entitled to serve" were deleted and the words "representative wuttundar whose duty it is to officiate" substituted. In line 7 "after due inquiry" was inserted after "believe."

The section was then agreed to.

In lines 1 to 5 of Section XXXVII. the words "representative wuttundar becoming physically or mentally incompetent" were deleted, and these words substituted—"wuttundar whose duty it is to officiate being or becoming unfit by reason of other employment or calling or physical or mental incompetence." In lines 9 and 10 "becoming physically or mentally incompetent" was deleted and "so becoming unfit" substituted.

Unfit persons not to officiate.

The section as amended was agreed to.

The Honourable Mr. ROGERS moved that the following section be added after Section XXXVII. :—

"Whenever a representative wuttundar whose duty it is to officiate ceases to be disqualified under the provisions of Sections XLIII. and XLIV. of this Act he shall become entitled, if otherwise fit, to serve in person, or to appoint a deputy in supersession of any deputy appointed by the Collector."

Persons recovering fitness may officiate if entitled to do so.

The section was agreed to.

After the word "wuttundar" in the first line of Section XXXIX. the words "whose duty it is" were substituted for "entitled"; and in line 4 "if otherwise fit" was inserted between "himself" and "perform." The section as amended was agreed to.

The words "or the guardian of a representative wuttundar" were inserted before "she" in line 5 of Section XLII. The section as amended was agreed to.

In line 4 of Section XLII. "and during any vacancy" was inserted after "deputy"; in line 5, "temporarily" was inserted between "shall" and "be" in line 6, "substitute whether a wuttundar or not" was substituted for "deputy"; and line 7 was struck out.

In line 3 of Section XLIV. "not exceeding" was substituted for "of"; the words "provided also that the appointment of a deputy on behalf of a minor shall terminate with the minority" in lines 11 to 13 were omitted, and the following words added to the section— "and any appointment of a deputy on behalf of a representative wuttundar under the age of eighteen years shall terminate on the attainment by such representative wuttundar of that age."

In line 3 of Section XLV. "an officiator" was substituted for "a wuttundar officiating."

In line 4 of Section XLVI. "or families" was deleted; in line 6 "head of the family" was substituted for "heads of the families"; in line 8 "a" was inserted before "representative"; in line 9 "wuttundars" was made "wuttundar"; and the remainder of the section was struck out.

The Council then adjourned.

By order of His Excellency the Governor in Council,
JOHN NUGENT,
Acting Under Secretary to Government.

Poona, 24th August 1874.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information :—

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Tuesday, the 25th August, at noon.

PRESENT :

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE-GENERAL.

The Honourable COLONEL M. K. KENNEDY.

The Honourable J. K. BYTHELL.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

Consideration of the Wuttundars Bill resumed.

The Council resumed consideration of the Hereditary Offices Bill (No. 12 of 1873).

The words "not exceeding five rupees" were struck out of lines 8 and 9, in Section XLVII., and "when" was inserted after "except" in line 13.

The Honourable Mr. ROGERS explained that this section was introduced mainly with the idea of giving Collectors power over wuttundars who neglected their work, or refused to live in their village, for, of course, it was impossible for patels or koolkurnies to do their work properly unless they lived in their villages.

Section XLVIII. was altered to read as follows :—"It shall be lawful for the Collector, with the previous sanction of Government, in case of fraud, the wilful framing of incorrect records, habitual neglect of duty, or other grave misconduct on the part of an officiator to remove him from office and appoint a deputy, who shall be selected from the wuttundars, unless Government shall otherwise direct."

Section L. originally stood as follows :—"When any representative wuttundar or any deputy appointed by him as such is convicted by any Criminal Court, or by the Collector under the provisions of this part, of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or part of the wuttun and profits.

"*Explanation.*—Where the deputy is appointed by the Collector, the forfeiture shall not take place."

The Honourable Mr. ROGERS moved that the words "or by the Collector under the provisions of this part" and the explanation be omitted.

Should an officiating wuttundar's grave offence be the means of confiscating the whole wuttun? The Honourable RAO SAHEB contends that an offending wuttundar should be able to imperil only his own share in the wuttun.

The Honourable RAO SAHEB Vishvanath Narayan Mandlik objected to any wuttundar losing more than his own life-interest for any fault he might commit.

His Excellency the PRESIDENT—This same question came before us on a previous occasion, when the native Members of Council agreed to allow the section to go out to the country as it now stands, on the understanding that the question should be left open for future discussion.

The Honourable RAO SAHEB—Then I will propose an amendment to the effect that if there is an offending wuttundar, that wuttundar shall not jeopardise the property of his fellow wuttundars.

The Honourable MR. GIBBS—I understand that this section is simply a repetition for the old law.

The Honourable RAO SAHEB—We have made many changes on the old law, and changes, I trust, for the better; and in the present case, especially when we have taken all power out of the hands of the minor wuttundars, I think we might endeavour to improve this section. Under the old law, it was only conviction by a Court of Session that was penal, and then it was left to the Government to decide whether the whole wuttun or any part of it should be confiscated; but now, we say, "any Criminal Court," so that a confiscation of a wuttun might depend even upon the decision of a Mamlutdar's Court.

The Honourable Mr. CHAPMAN—Trial only by Court of Session was simply an arbitrary distinction, as, whatever a man's offence, he was bound to be tried somewhere.

The Honourable RAO SAHEB—It was a thing scarcely ever heard of, the confiscation of wuttuns under Native Governments.

The Honourable MR. CHAPMAN—I never heard of wuttuns being interfered with under the British Government; still, as a matter of common law, I should be sorry to see the present check removed.

The Honourable RAO SAHEB—Since we are endeavouring to improve the status of wuttundars, since we have practically deprived the minor brotherhood of wuttundars from having any share in the concerns of the wuttun, and since we have made fixity of tenure a leading principle of the Bill, I do not see why Government should seek to incur the odium of retaining this objectionable power in the statute-book, especially when it is never likely to be put in force.

The Honourable MR. CHAPMAN—For political offences it might be necessary to exercise this power occasionally.

The Honourable RAO SAHEB—Then say that if there is an offence committed against the State a wuttun may be forfeited. I do respectfully, but strongly, urge upon the Council the propriety of returning to the words which the late Honourable MR. NARAYAN succeeded in introducing into this section at the previous discussions on the second reading.

The Honourable MR. ROGERS—If the whole of the patels combined together to defraud Government, would that not be a sufficient reason for confiscating a wuttun?

The Honourable RAO SAHEB—Where a representative wuttundar becomes officiator, I submit it will be practically impossible for the other wuttundars to have any interest in the wuttun.

The Honourable MR. CHAPMAN—Take those offences that are unfortunately common in the Ghaut districts at present. There you have bands of plunderers, and if a whole wuttun were to give these men food and shelter, surely confiscation of the wuttun could alone be an adequate punishment.

The Honourable RAO SAHEB—There would probably be other means of reaching the offending wuttundars.

The Honourable Colonel ANDERSON—But this would certainly be the sharpest way.

HIS EXCELLENCY the PRESIDENT—It seems to me it is doubtful, if an officiator is guilty of misconduct, whether Government can deprive not only him of his income, but also a number of other persons of their incomes.

Should Government not have the right of resuming that which it granted for certain purposes that have not been properly carried out?

The Honourable Colonel KENNEDY—It would be hard upon the other wuttundars, I dare say, but the question is whether Government should not have the right of resuming what it granted for certain purposes which have not been properly fulfilled.

The Honourable RAO SAHEB—This officiator cannot personally assign anything more than a life interest, and why in this particular matter of wuttuns should he be the means of destroying the life interest of others?

The Honourable Mr. CHAPMAN—There can be no organised or systematic treason carried out without some of the wuttundars knowing about it. Moreover, the offence of wuttundars may consist, not in actually combining against Government, but in passively acquiescing by not giving information about what is going on.

The Honourable RAO SAHEB—Practically the management of wuttuns will be in the hands of Government. I may say that I have observed the village system for thirty-five years, and I think the Council is now about to enforce a very great hardship.

The Honourable Colonel ANDERSON—We are simply introducing a rule which ought to have been a rule before, and saying that inferior members of a wuttundar family shall be debarred from interfering with matters which formerly they would not have been allowed to interfere with.

The Honourable Mr. CHAPMAN—Would it satisfy the honourable member if we were to retain conviction by Sessions Court?

The Honourable RAO SAHEB—I do not object so much to the kind of Court as I do to sacrificing the life-interest of several people for the fault of only one man.

The Honourable Mr. GIBBS—Since the law of 1843 was passed, there have been only two cases of confiscation of wuttuns, and one of the cases, which occurred at Nasik, was, I believe, quasi-political.

The Honourable Mr. ROGERS—We have given the heads of families the right to sign documents, &c., and therefore the officiator may have an efficient supervision kept over his conduct by his bhaeebunds.

The Honourable RAO SAHEB—That may be in Guzerat, but not in any other part of the country with which I am acquainted. Some people may sign village papers, but

here are wuttundars who could have no interest in living in the village, or in looking closely after what the officiator was doing.

The Honourable Colonel ANDERSON—Surely, if some of these wuttundars receive emoluments from a wuttun, there must be some responsibility attaching to them in the administration of the wuttun.

The Honourable RAO SAHEB—We have already deprived the minor wuttundars of all responsibility, and if we have done that, I do not think you ought to forfeit more than the offender's life-interest.

The Honourable Mr. BYTHELL suggested that for a serious offence the life-interest of all the sharers in the wuttun at the time should be forfeited, but that the rights of heirs should not be interfered with.

The Honourable Mr. GIBBS—If this were a new proposal I would oppose it, but as it is considered necessary by the Revenue authorities I am prepared to vote for the retention of the present law.

The Honourable Mr. BYTHELL—I think the Honourable Mr. Gibbs is mistaken in thinking that all the Revenue officers agree with this section. I see that several of these gentlemen express the opinion that it is unnecessarily harsh.

The Honourable Mr. GIBBS explained that he only alluded to the Revenue officers who attended the conference held in Poona. Some of the most able members of the Revenue Department attended this conference, and they were all in favour of the power of confiscating a wuttun remaining in the hands of Government.

The Honourable Mr. BYTHELL—That may be, but there are some very strong opinions expressed in writing against that power.

The Honourable Mr. ROGERS—Before this question comes to a vote I beg to remind honourable members that Government can have no possible inducement to resume wuttuns in this particular way. Services must be performed, and if a wuttun ever were confiscated, the duties would simply be transferred to some other person, and the emoluments would be appropriated for his remuneration and not escheat to the State.

The Honourable KHAN BAHADOOR—Government might join certain villages together, and in that case it would be a gainer, while certain persons who used to perform services would undoubtedly be losers.

The Honourable RAO SAHEB—Before the sense of the Council is taken upon this important amendment, I wish to repeat a remark or two. If the Council is now simply confirming the old law, all I can say is that it has already changed that law in many respects, and for the better I hope. It has been acknowledged that the old law has been almost useless except in one case; the other may be left out of consideration as it was quasi-political. We have now introduced an entirely different system under which theoretically there may be joint responsibility in the wuttuns, but practically there cannot be, as nobody but the officiator will have anything to do with village management. That being the case, I think it is hard that the whole family of shareholders should suffer for the fault of one man, unless their participation be clearly proved.

The Honourable NACODA MAHOMED ALI ROGAY concurred with the opinions expressed by the Honourable Rao Saheb, and remarked that if the amendment were not agreed

to, the Council would simply be adopting the policy prevalent under the Peishwa's or Gaekwaree rule.

The Honourable Rao Saheb proposes that an offending wuttundar shall imperil only his own life-interest.

The Honourable RAO SAHIB formally moved—That in line 9 of Section L. after "of" the following words be inserted—"the life-interest of the officiator in," and that the following be omitted—"the whole or part of."

The Council divided :—

Ayes—4.	*Noes*—6.
The Honourable J. K. BYTHELL.	The Honourable A. ROGERS.
,, RAO SAHIB V. N. MANDLIK.	,, J. GIBBS.
,, NACODA MAHOMED ALI ROGAY.	,, the ADVOCATE GENERAL.
,, KHAN BAHADOOR PADAMJI PESTONJI.	,, COLONEL M. K. KENNEDY.
	,, COLONEL W. C. ANDERSON.
	,, F. S. CHAPMAN.

The amendment was therefore lost.

The Council then adopted several minor alterations in order to make the Section conform more to the old law, so that ultimately the section stood thus :—"When any representative Wuttundar, or any deputy appointed by him as such, is convicted by any Court of Session of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or part of the wuttun and profits."

The Honourable Mr. ROGERS moved that after "wuttun" in line 11 of Section LI. the following words be inserted—"of the representative Wuttundar entitled to officiate"; and that in line 13 of the same section for "be a representative Wuttundar or Deputy" read "be such representative Wuttundar or a Deputy appointed by him."

The amendments were agreed to.

The Honourable Mr. ROGERS moved that the sentence from "the Collector," &c., in line 27 of Section LIV. be converted into a new clause (*d*) ; that in line 28 the words "and enforce" be inserted between the words "for" and "the" ; and that after the word "representatives" in line 31 the following words be added :—"And in cases where the crime of cattle poisoning is prevalent shall, with the sanction of Government, have power to attach, during the pleasure of Government, the wuttuns of the persons whom he may have reason to believe to have been guilty of, or to have connived at the commission of, the crime."

The amendment was agreed to.

In line 6 of Section LVII. "the names of the occupants" was inserted after "lands", and in line 17 "not" was altered to "otherwise."

The Honourable Mr. ROGERS moved that the words following the word "made" in Section LVIII. be omitted, and the following words substituted :—"in accordance with the provisions of this Act in the particulars above specified."

The amendment was agreed to.

The Honourable Mr. ROGERS moved that in line 11 of Section LIX. for "hereditary offices" read "wuttundars"; that in line 3 of Section LX. for "hereditary officer" read "wuttundar;" and that the following words be added as clause 2 to Section LXII ;—

" *Clause* 2.—Every person who shall have been summoned to give evidence, or to produce any document in his possession, by the Collector or other officer conducting an investigation under this Act, shall be legally bound to attend or to produce such document."

The amendments were agreed to.

In line 6 of Section LXIII. "remuneration" was substituted for "emolument", and in line 11 "successive" was deleted; and the Honourable Mr. ROGERS moved that the following clause be added to the section :—

" *Clause* 2.—Unless the Governor in Council shall otherwise direct, decisions passed subsequently to the year 1866, after an investigation recorded in writing and after a proper opportunity had been afforded for the hearing of claims and the production of evidence and which are recorded, with the reasons therefor, in the handwriting of a Collector or his assistant or deputy, shall be accepted in so far as they may not be inconsistent with the provisions of this Act, in lieu of fresh investigation and decision under this Act for the purpose of framing the register required in Part XI. thereof. If any details necessary for the said register have not been recorded in any decision of the nature described above, but are forthcoming from the evidence taken in connection with such decision, they may be supplied from such evidence in lieu of fresh investigation for the completion of the register. Such details as may not be forthcoming shall be obtained by such further investigation as the Collector may deem necessary."

The amendment was agreed to.

After a brief conversation relating to Section LXVI., the words "nor in any case not expressly provided in this Act, no appeal shall lie" were struck out.

In line 15 "ninety" was substituted for "sixty" in Section LXVII.

The Honourable Mr. ROGERS moved that the following section be added after Section LXXV. :—

" The Governor in Council may from time to time confer on any officer specially selected for the purpose all or any of the powers and duties which under this Act are required to be performed by a Revenue Commissioner or a Collector, and may authorise the delegation to any mamlutdar or mahalkaree of the power to fine hereditary village officers in sums not exceeding two rupees."

The new section was agreed to.

The needful alteration in the numbering of sections and clauses in consequence of the introduction of new sections and clauses was made throughout the Bill, so that the last section (*i.e.*, LXXVI.) stood Section LXXXV., and the Council then agreed to the Schedule and Title of the Bill.

The Council proceeded with the next order of the day—the second reading of Bill No. XI. of 1873 : a "Bill for the Regulation of Jails in the City and Presidency of Bombay and the enforcement of discipline therein."

The Honourable Mr. ROGERS, in moving the second reading of the Jails Bill, said :—

Mr. Rogers moves the second reading of the Jails Bill.

Sir,—I beg to move the second reading of the Regulation of Jails Bill. The Council will recollect that the Bill was brought forward in November last, when it was considered by the Council that we had not taken sufficiently into consideration the laws passed on the subject by the Government of India. The Bill was therefore referred back to the Select

Committee whose report is now before the Council. It may be said generally that we have preserved the original scheme of the Bill as drafted, but at the same time have taken advantage of many of the provisions of Act XXVI. of 1870 of the Government of India. The Select Committee considered that punishments were apt to be inflicted by Superintendents of Jails in rather a harsh manner, and therefore they have provided for more frequent and regular examinations of Jails by visitors, and also laid down that in any case where a Superintendent has inflicted corporal punishment he shall be bound to record his reasons, so that the visitors and Government may be able to keep a check upon his proceedings.

Bill read a second time and considered in detail.

The motion was agreed to, and the Council proceeded to consider the Bill in detail.

In line 3 of Section II. the words "the person or persons" were altered to "any person."

Adverting to Section III. the Honourable the ADVOCATE-GENERAL said:—In order to make it perfectly clear that the Bombay House of Correction will be brought under this Act, I propose that in line 8 the words "including the House of Correction" shall be inserted after "Bombay."

The amendment was agreed to.

In line 6 of Section XI. "in writing" was inserted after "issue".

Lines 9, 10, and 11 of Section XIII. were altered to read as follows:—"of the District, or, on the recommendation of the Medical Officer, by the permission of the Nazir in charge of the Jail".

The Honourable the ADVOCATE-GENERAL here remarked that if this Act were to be properly carried out, Government must take care to separate the Civil and Criminal Jails all over the country.

In line 21 of Section XIV. the word "necessary" was struck out, and "order by the Judge or Assistant Judge under the provisions of Section XI. of this Act" substituted. In line 26 "in writing" was inserted after "demand".

In line 9 of Section XV. the words "the prisoner so dying" were altered to "such prisoner"; and, on the suggestion of the Honourable Khan Bahadoor, "relatives or" was inserted before "friends" in line 12, and in line 14 "burned, or otherwise disposed of" was inserted after "buried", and "or burnt" was struck out.

In line 7 of Section XVI. the word "or" after the word "burial" was struck out and the words "or disposal" added after the word "cremation," and in line 8 "or burnt" was struck out, and the following words substituted "burned or otherwise disposed of":—

The following words were added to the end of Section XIX.:—"and at such other places as the Governor in Council may from time to time direct".

In line 11 of Section XXV. the words "ordinary custody in the" were inserted before "Jail".

Referring to Section XXVI., His Excellency the PRESIDENT remarked that perhaps it would be well to define the size of fetters that ought to be used, as he had never seen such heavy irons anywhere as those which were used in this country.

The Honourable Mr. GIBBS remarked that this was a matter of detail which it would be difficult to settle in the Bill.

His Excellency the PRESIDENT.—As it is stated in the Bill that "fetters are not to be part of punishment", the greatest caution will have to be exercised in permitting Jailors to place fetters upon people.

In line 27 of Section XXVIII. the words " without delay " were inserted after " Government ".

In line 9 of Section XXXIII. the words " or solitary" were inserted after "separate."

In line 5 of Section XXXVII. the words "give to any prisoner or" were inserted before "introduce"; and in line 10, the words "or introduced into" were inserted before " such."

In line 6 of Section XLI. the words "or other suitable clothing" were inserted before "and"; and in lines 11 and 12 "cause the prisoner to be discharged" was substituted for "discharge the prisoner".

In line 7 of Section XLVII. the words "penal servitude or transportation, or," were inserted after "imprisonment".

In line 18 of Section XLVIII. "Medical Officer" was substituted for "Surgeon"; in line 19 "such" was inserted before "prisoner"; in line 20 "so dying" was struck out; in line 23 "relatives or" was inserted after "or"; in line 24 "or" was struck out; and in line 25 "or otherwise disposed of" was inserted after "burnt".

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Poona, 25th August 1874. Acting Under Secretary to Government.

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Friday, the 9th October 1874, at noon.

PRESENT.

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

His Excellency the Honourable SIR CHARLES STAVELEY, K.C.B.

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable COLONEL M. K. KENNEDY.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

Mr. Rogers moves that the Jails Bill be reconsidered.

The Bill reconsidered.

The Honourable Mr. ROGERS moved that the consideration of the Jails Bill be resumed. He said that the Bill had already been considered in detail, and the only amendment which had been received regarding it was the following from the Honourable the Advocate-General, who considered that it would make the Bill apply clearly to Non-regulation as well as Regulation districts :—

"In the event of the provisions of this Act being extended or applied to any place beyond the districts subject to the operation of the General Regulations and Acts affecting the Bombay Presidency, the weekly and periodical visitation as hereinbefore directed of any District Jail established in the said place, shall be conducted by such officers as the Government may from time to time appoint, and the visitors so appointed shall have the same powers and duties as are conferred on ex-officio visitors by the preceding section."

Bill read a third time and passed.

The above new section was added to the Bill and the Bill was then read a third time and passed.

Mr. Rogers moves the first reading of Bill No. 2 of 1874.

The Honourable Mr. ROGERS moved the first reading of Bill No. 2 of 1874 (a Bill to amend Bombay Act No. I. of 1865). He said that the statement of objects and reasons showed clearly the object of Government in introducing this Bill. The High Court of Bombay had declared that because the date up to which occupancies may be relinquished is laid down in Act I. of 1865 as the 31st March, the survey settlements cannot legally be introduced to have effect from the following revenue year subsequently to that date. It has been found on previous occasions, when survey settlements were about to be introduced, that there are so many details to be gone into by the officers that it is almost impossible to get everything ready by the 31st March. Therefore, it was now proposed that the date should be postponed to the time which is generally regarded as the commencement of the cultivating year—that is, the 5th of June. In many districts in the Presidency it would be simply impossible to go into the fields and prepare the field registers which are necessary before a settlement can be introduced. Sub-divisions frequently occur in fields,

Mr. Rogers points out the necessity of the date on which an occupier must give notice of his intention to vacate his occupancy being extended from the 31st March to the 5th June.

and their measurement which must be duly recorded, in order that every individual may have his rights, requires considerable time. By putting the time back cultivators will not be inconvenienced, and the Bill contains ample provisions to obviate any hardships to which cultivators could possibly be exposed by the alteration of date.

The Honourable Rao Sahib Vishvanath Narayan Mandlik—There is nothing in the Bill regarding the difficulty said to have been raised by the High Court. The only case I know of touching this point is that of Govind Venayek *vs.* the Collector of Ratnagiri in which the enhanced assessment was levied at once, and hence arose the difficulty in that case. The Council now propose under this Bill not to levy the enhanced assessments at once, and if this practice is laid down by an administrative order I think all difficulty vanishes. But if we are to have a new Bill I think that this one is incomplete, and if the Council is dealing with the matter at all, I think that all other orders and notices affecting the agriculturists ought to be dealt with at the same time.

The Honourable Mr. Rogers—We are proposing to introduce, in a short time, a new Revenue Code in which all these matters will be dealt with.

The Honourable Rao Sahib—As we are going to have a Revenue Code, and it may take some time to have that Code thoroughly discussed in this Council, would it not be better to define now the subject of notice between landlord and tenant? The fact of six months' notice being required is causing great hardship. In some parts of the country it causes the tenant practically to lose the twelve months of the year.

The Honourable Colonel Anderson—The Honourable Rao Sahib is now speaking on a very different subject. The object of this Bill in the first instance has been explained by the Honourable Mr. Rogers. In some parts of the country the Revenue Survey officials could prepare the necessary field registers showing the names of occupants of land before March, but in the Concan and the Ghaut districts, where holdings are very small, and disputes about boundaries are numerous, the thorough examination of the properties becomes a troublesome operation, and one requiring a great deal of time. I believe that the same difficulty exists in Guzerat. I think this Bill will benefit the landholders, for it is much better for them to have this examination done thoroughly and completely at once than having it done hurriedly in such a manner as to cause a great deal of trouble afterwards. Clause 3 of the Bill before us really contains a considerable concession to occupants of lands who under certain circumstances may get their assessment for the first year fixed at the old rates. The old rates thus last for thirty-one years, whereas the new ones will not extend over a longer period than twenty-nine years, and this is surely a matter of considerable advantage for the landholders.

His Excellency the President—Supposing the new settlement is introduced on the 25th August, then according to this Bill a man does not become liable for the increased rate till the first of August following. But when must he give notice that he is going to give up the land?

The Honourable Colonel Anderson—If a settlement was introduced on the 25th August 1874 the new rates of assessment would take no effect in the year then current; and in the ensuing year 1875-76 the new rates would not be levied on any occupant who resigned his land before the 31st March 1876 according to the third clause of Section 2 of this Bill.

His Excellency the President remarked that under these circumstances it appeared to him that plenty of time would be allowed to the landholders.

The Honourable Mr. GIBBS—I remember when the case alluded to by the Honourable Rao Sahib came before the High Court, it was pointed out that it would be very hard if a man were obliged to give in his resignation of his land on the 31st March, because it might be that he knew of the revised assessments only a day or two before.

The Honourable Rao SAHIB—The case supposed by His Excellency is quite distinct. Before the 31st March a man would have eight months' notice during which he might resign. The fact is the High Court has raised no such difficulty as this Bill seems to suppose. In the case before the High Court, the settlement was introduced in April at once, and the defendant could not therefore resign in the preceding month of March. We are now giving three months to the Revenue Survey and twelve months to the ryots, so that the law will practically be neutralised.

The Bill read a first time.

His Excellency the President put the motion, that this Bill be read a first time.

The motion was agreed to, and the Bill was ordered to be translated before the Second Reading.

The consideration of the Hereditary Offices Bill resumed.

The Honourable Mr. ROGERS—Sir,—I propose that Council revert into general committee in order to resume consideration of the Bill to amend the law relating to hereditary offices. A great many verbal amendments will be submitted for the consideration of the Council, and as none of them, with one exception, affect the principle of the Bill, I dare say the Council will have no difficulty in agreeing to them. The alterations that may be considered to affect the principle will occur on Sections 78 and 79, which we propose to omit altogether. These sections refer to the jurisdiction of Civil Courts with regard to matters dealt with under this Bill. There is at present under the consideration of the Executive Government a Code in which that subject will be provided for, and it is therefore unnecessary to include it in the Bill now before us.

The Council agreed to resume consideration of the Bill.

The Honourable Mr. ROGERS then proposed the following amendments, which were agreed to:—

In Section IV., line 11, before "at" insert "whether."

In line 29, before "constitute" insert "together."

In line 40, omit the word "hereafter", and after the word "specified" insert the words "in Sections 33 to 35 of this Act."

In line 50, for the words "the provisions" substitute "Section 25."

In lines 52 and 53, for the words "includes a deputy appointed under this Act" substitute the words "means the person actually performing the duties of an hereditary office for the time being, whether he be a representative Watandar or a deputy or a substitute appointed under any of the provisions of this Act."

In line 54, for the word "includes" substitute "means," and in line 59 after the word "child" add "or in case of dispute the holder of a certificate of guardianship from a competent court."

In Section VI., Clause 1, line 18, for "be" substitute "appear."

In line 21, for the words "the District Court" substitute the words "any Civil Court having jurisdiction in the matter."

In Clause 2, line 27, omit "or" and after "11" add "or 13."

In Section VII., line 1, after "as signed" insert "under Section 23 of this Act."

In Section VIII., lines 1 and 2, and in Section VIII., line 22, and in Section IX., Clause 1, lines 2 and 16, and in Section X., lines 4, 15, and 23 for the words "part or" substitute "any part thereof, or any of the."

In lines 5 and 11, and in Section IX., Clause 1, line 5, and in Section X., lines 9 and 15, after the word "has" add "or have."

In line 8, lines 12 and 13, and line 19, and in Section IX., Clause 1, line 8, and in Section X., lines 2 and 3, and in Section XI., lines 5 and 6, for the words "decree of any Court" substitute "virtue of, or in execution of a decree or order of any British Court."

In line 23, after "liable" insert "under the orders of the Collector."

In Section IX., add at the end of the Clause 2: "The decision of the Collector as to what is the full rent shall be final."

In Section X., line 8, after the word "assigned" insert the following words: "under Section 23 of this Act."

In Section X., line 10, after "passed" add "or may pass."

In Section X., lines 20 and 21, for the words "that such alienation has been decreed," substitute: "stating that the property to which the decree or order relates is a Watan or part of a Watan, or that such property constitutes the profits or part of the profits of a Watan, or is assigned as the remuneration of an officiator, and is therefore inalienable."

In line 22, for the words: "placed on" substitute "then pending against," and at the end of the section add "and shall cancel the decree or order complained of so far as it concerns the said Watan, or any part thereof or any of the profits thereof."

In Section XI., line 4, for the words "have taken" substitute "take."

Instead of the present Section XII. substitute—

"XII.—It shall be lawful for the Collector whenever it may be necessary in carrying out the provisions of Sections 8, 9, and 11 of this Act

(*a*)—To summarily evict any person wrongfully in possession of any land, or

(*b*)—To levy any rent due by any person in the manner that may be prescribed in any law for the time being in force for the levy of a revenue demand."

In Section XIII., line 3, after the word "officiator" insert the words: "under Section 23 of this Act.

In Section XV., Clause 4, line 1, after "holder" insert the words: "for the purposes of this Section."

In Section XVI., line 1, for the words "in this Act" substitute the words "in the last preceding Section."

In Section XVIII., line 3, after the word "Watan" insert the words "of lower degree than that of Patel or Kulkarni."

In Section XIX., line 10, in lieu of the last five words insert "and to decide whether the payment shall be made in kind or in money."

In Section XXII., line 5, after the word "assign" insert the words: "subject to such sanction as may be required by any law or order of the Governor General of India in Council for the time being in force."

In line 18, after the word "Government" insert "subject to the sanction mentioned in the first Clause of this Section."

In Section XXIII., line 14, after the word "Officiators" insert "The existing assignments shall, until altered by competent authority, be taken to have been made under this Section."

The honourable member then proposed that to Section XXV. the following proviso should be added:—

"Provided that only heads of families shall be so recognised."

The Honourable RAO SAHIB objected to this amendment, which would only raise up the whole question again of wattan representation.

The Honourable Mr. ROGERS—Section XXVI. shows that it is only heads of families that are meant to be recognised, and this amendment will make the Council's intention more apparent.

His Excellency the PRESIDENT—It is already laid down that the Collector must be guided by the custom of a watan, and if the custom were that of others, then heads of families might be elected as representative watandars; by carrying this amendment, it will clash with the rule already laid down for the Collector's guidance.

The Honourable RAO SAHIB mentioned that he knew of cases in which the custom of many years had marked the succession to a representative watandarship to be different from mere primogeniture.

The Honourable Mr. CHAPMAN—But we take our stand from 1843, and we have been told by experienced Collectors that it is only since that date that all such abuses have crept in, and we now wish to revert to the practice which prevailed before 1843.

After some further discussion the amendment was not pressed.

The following amendments were then proposed and agreed to:—

In Section XXVI., line 7, after the word "into" the words "and take into consideration" be inserted.

In Section XXVII., lines 2 to 5, for the words "practice has been to appoint a member of one family only," substitute "custom has been for a member of one family only to serve."

In Section XXVIII., line 2, for the word "practice" substitute the word "custom."

In Section XXIX., line 3, omit the words "except that."

In Section XXX., line 1, for the word "custom" substitute the word "practice"; and in line 3 after the word "introduced" insert the words "under the British rule."

In Section XXXI., line 1, for "the" substitute "any"; and at the end of the Section add the words "with such agreement."

In Section XXXIII., line 4, after the word "registered" insert "representative"; in line 5 after the word "Watandar" insert "or his widow"; and in line 12 after the word "shall" insert "be shown to have been or shall."

In Section XXXIV., line 4, after the word "registered" insert "representative"; and in the same line after the word "Watandar" insert "or his widow"; and in line 8 after the word "or" insert "by his widow, or in case of their death then."

In Section XXXV., line 7, instead of the words "granted by" substitute "or of a final decree of"; and at the end of the Section add "establishing the validity thereof".

In Section XXXVI., omit the proviso and substitute the following, viz.: "A certificate of heirship, or a decree of a competent Court shall, until revoked or set aside, be conclusive proof of the facts stated or determined in such certificate or decree."

In Section XXXVII., line 5, after the word "may" insert the words "subject to the provisions of Section 49 of this Act."

In Section XXXVIII., line 7, after "27" insert "the first clause of Section", and after the word "and" in the same line insert "Section"; and in line 9 after "28" insert the words "the second Clause of Section 29 and Section 30"; and in line 12 after the word "period" insert the words "shall be fixed at the discretion of the Collector, but."

In Section XL., line 7, for the word "unless" substitute "but may be."

In Section XLII., line 3, omit "or" and after "44" insert "or 46."

In Section XLIV., line 1, after the word "any" insert "representative"; in line 6 omit the words "or mental"; in line 7 omit the words "in the former case"; in line 9 omit the words "the latter"; after the word "case" insert the words "of his mental incompetency"; and in line 11 after the word "Watandar" insert the words "unless himself mentally incompetent."

In Section XLVIII., line 6, after the word "misconduct" insert the words "under the provisions of Section 56 of this Act."

At the end of Section LI. add the words "and in the event of the representative Watandar declining to appoint a Watandar as his deputy, the Collector shall himself appoint one"; and at the end of the Section add:

"When the Collector himself appoints a deputy under the provisions of Section 48 of this Act he may, if Government so direct, appoint other than a Watandar."

In Section LII., in line 10, after the word "ceasing" insert the words "or on the death of his principal."

In Section LIII., line 6, for "and" read "but," and in line 7 for the words "penalties for the acts of the substitute" substitute the words "the penalties prescribed in Sections 55 to 59 of this Act."

In Section LVI. omit the last part beginning with the words "and appoint a deputy."

In Section LVII., lines 9 and 10, for the words "the Collector shall appoint" substitute the words "appointment of," and at the end of the Section add "shall on the recurrence of such period be made by the Collector and not by him."

In Section LVIII., in line 2, add the words "or substitute" after the word "deputy"; in lines 3 and 4, omit the words "as such"; in line 8 after "or" insert "any"; and in line 9 for the words "and profits" substitute the words "or of the profits thereof."

In Section LIX., line 2, for "are" read "shall be"; in line 8 after the word "Watandars" insert "themselves are subject to when"; and in line 15 after the word "Watandar" insert "himself."

In Section LXII., line 28, for the words "The Collector shall also" substitute "to"; in line 33 omit the word "shall"; and in lines 34 and 35 omit the words "have power to attach."

In Section LXVII., line 5, after the word "bound" insert the words "subject to the provisions of this Act."

In Section LXVIII., line 5, after the word "or" insert the words "of the present or former"; and in line 6 omit the words "or the Native Government."

In Section LXX., line 5, omit the words "on oath or affirmation."

In Section LXXI., Clause 1, line 1, at the commencement of the clause insert the words "except as hereinafter provided in Clause 2 of this Section."

In Section LXXXIV., line 10, for the word "by" substitute the words "according to law or under the."

In Section LXXV., line 4, after the word "investigation" insert the words "recorded."

To Section LXXX. add the words "not less than seven days before action is required to be taken by any person thereon."

At the commencement of Section LXXXIII. insert the words "except as is otherwise provided in Section XVIII. of this Act."

In the Schedule in the third column opposite to "Act XI. of 1843" for "the whole Act" substitute "so much as is not already repealed."

Colonel Anderson proposes the introduction of a system of elections in watans where the watandar entitled to officiate gives his consent.

The Honourable COLONEL ANDERSON moved that the following new sections be added to the Watan Bill as Sections XL. and XLI. :—

"In the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the Collector shall on the occurrence of the turn of any such representative watandar to perform the duties, issue a notice to the whole body of registered representative watandars, calling upon them to appear before him at a certain time and place to elect an officiator, or such number of officiators as may be required by the Collector under the provisions of Section 41 of this Act.

Clause 2.—If not less than three-fourths, including the watandar whose turn it is to officiate, of the representative watandars appear at the appointed time and place and unanimously nominate a fit and proper person or persons, being a watandar or watandars of the same watan, the person or persons so nominated shall be entitled to officiate in the place and for the period of service of the representative watandars whose turn it is to perform the duties.

Clause 3.—If the person or persons so nominated be other than the representative watandar whose turn it is to perform the duties, he or they shall for all the purposes of this Act be deemed to be the only appointed deputy or deputies of the said representative watandar.

If, in the case of a watan in which the representative watandars are entitled to perform the duties in successive periods, the representative watandars shall not appear at the time and place appointed under the provisions of the last preceding section, or

shall fail to nominate an officiator, or the requisite number of officiators, unanimously, then the provisions of this Act as to service by the representative watandar entitled to officiate and as to appointment of deputies shall apply."

The Honourable COLONEL ANDERSON—The object of this Bill is so to regulate successions and appointments that the intriguing and corruption which prevail in watans may be greatly mitigated. As regards single watans the matter is disposed of. In rotation watans it is proposed to fix the rotation once for all, which certainly will have the effect of preventing any intriguing as to the order in which the representative watandars are to officiate. It is perfectly immaterial to Government who fills the position of officiator so long as fit men are procured, though undoubtedly the best man would be preferable. Some of the Collectors allege that fixing the order of rotation finally will have the effect of preventing the best men from being always got. In fact, they consider this regulation to be too hard and fast, and that it will have the effect of doing away with all interest on the part of the watandars as to who shall officiate in the watan, inasmuch as the whole thing will be reduced to a certainty. This interest in the affairs of a watan should not, I think, be done away with. As far as such an interest can be created, it is desirable to allow it full play. Watandars as a rule have not much to think about. The succession to the duties of a watan has hitherto been a subject of great interest with them, and it is not altogether advisable to deprive them of that interest and give them nothing whatever to think about so far as public life is concerned. It is asserted that the amendment I propose will be entirely inoperative, as no representative watandar with a turn to officiate would be induced to forego his turn. But all I have heard makes me doubt that assertion. A representative watandar might be too old or too young, or one afraid of assuming heavy and responsible duties, and who would be glad to see somebody else to do them. At the same time he would be very unwilling to confess that he did not feel equal to performing the service and would prefer a deputy appointed. He would probably rather attempt to fulfil the duties himself, and therefore we would have a man serving who certainly would not be the fittest person to do the duties of the watan justice. I think it would be much better to give him an opportunity of getting a substitute in the way proposed by the amendment. All the watandars would meet and point to so and so as the best man to officiate, and if the Collector's voice were thrown into the debate, I doubt not that the most suitable person would, as a rule, be appointed as officiating watandar. This would at the same time preserve some electoral privileges to the people, and induce in them a public spirit which would be well for them and for Government. It may be said, "Why not go further, and carry election through all parts of the Bill, and make majorities predominant?" But that is the very difficulty which it is the object of this Bill to remove. We can only go a certain length, and beyond that the rights of parties will not permit us to go. The amendment I propose arises out of various amendments which have been passed to-day and suggestions made by officers learned in the law.

The Honourable RAO SAHIB—Now that we have come once more to the elective principle, I would suggest for the consideration of Council whether it would not be more practical to agree to election by a majority of the watandars whose families hold three-fourths of the watan emoluments.

The Honourable COLONEL ANDERSON—If we get into majorities we get into a number of difficulties.

His Excellency the PRESIDENT—Might not three-fourths actually turn out the man who is entitled to officiate ?

The Honourable COLONEL ANDERSON—No : the representative watandar must agree before any election can take place.

The Honourable Mr. CHAPMAN—Practically, then, the representative watandar will always have the power of electing his own deputy.

The Honourable COLONEL ANDERSON—I do not mean to say that in a little trumpery watan, worth Rs. 10 a year, the privilege contained in the amendment would be great; but in the case of larger watans it would be looked forward to with some interest by the watandars. It may give rise to some corruption, but corruption and khutput in elections are not unknown in England as well as India. As far as khutput itself goes, I do not think it is advisable to stop it altogether. When it is external khutput it ought to be interfered with, but as to internal khutput it might be left alone, for it amuses the people and does no harm to us, as it exists entirely among themselves. There would be many cases, I am sure, in which unanimity would be gained. I think the amendment is decidedly a move in the popular direction.

The Honourable RAO SAHEB approved of the amendment as it was an advance towards the principles he contended for.

The Honourable Mr. ROGERS supported it because it would cut the ground from under the feet of those who argued that it would be unjust to make the whole body of watandars responsible for the acts of one person.

The amendments were agreed to.

The Council then adjourned.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Acting Under Secretary to Government.

Poona, 9th October 1874.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information:

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Thursday, the 15th October, at noon.

PRESENT.

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable COLONEL M. K. KENNEDY.

The Honourable COLONEL W. C. ANDERSON.

The Honourable F. S. CHAPMAN.

The Honourable RAO SAHIB VISHVANATH NARAYAN MANDLIK.

The Honourable KHAN BAHADOOR PADAMJI PESTONJI.

Mr. Rogers moves the third reading of the Watandars Bill.

The Honourable Mr. ROGERS moved the third reading of the Watandars Bill. He would not trouble the Council with any remarks upon it as it had been under their consideration for a long time past, and previously had been carefully considered by the officers of Government.

Mr. Chapman summarises the objects of the Bill.

The Honourable Mr. CHAPMAN—Sir,—Before this Bill is read a third time I wish, by way of summing up the results of our labours, to state what I conceive to be the scope of the measure and the objects which we hope to obtain by its enactment. In the first place, I think we may congratulate ourselves that on this occasion, at all events, we cannot be charged with having legislated in a hasty and precipitate manner. The subject has been under the consideration of the Government for many years past. Conferences have from time to time been held, which have been attended by the most able and experienced Collectors from different parts of the Presidency, and since the introduction of this Bill into the Council, more than a year ago, it has been translated, widely distributed over the Presidency, and the fullest and freest criticism has been invited from all quarters. The voluminous papers that have been placed before honourable members will show how unreservedly this invitation has been responded to. We have, in fact, taxed not only our own patience, but that of the official world generally to the utmost. Well, broadly speaking, the end sought to be attained by all this enquiry has been to strengthen and build up from their foundations the ancient village forms of Government as they are found to exist in the offices of patel or head man, of kulkarni or accountant, of watchman, and of mhar or man of all work. It is a great satisfaction to know that the measure we are now about to enact has, with the one exception of the question of maintaining the existing law in regard to the joint responsibility of watandars, to which I shall refer hereafter, been unanimously approved by the Council.

I will now briefly review the principal provisions by means of which we hope to preserve, as far as possible, the status of the officers I have enumerated; and stay the process of disintegration which has so rapidly set in of late years.

In the first place, I would draw the attention of honourable members to Sections V. to XIII. They will see that we have recognized the all-important necessity of providing adequate remuneration. To this end we have made the most effectual and stringent provisions against the alienation of watan property. Under Native Governments fixed cash salaries, such as we are in the habit of paying, were hardly known, and the cost of the administration was mainly defrayed by assignments of land. It must be obvious to any one who considers the subject that it is hopeless to expect efficient service without sufficient remuneration, and it must be also clear that it would not be possible on financial grounds to increase the pay of this vast host of officials scattered over every part of the country, except by having recourse to additional taxation to an extent that could not be thought of. Therefore, it behoves the Government to jealously guard the assignments that have from old been attached to those offices, and prevent their being alienated and falling into the hands of money-lenders. In the steps we have taken in this direction, we are merely enforcing and enacting what has been well known to be the common law of the country. I am happy to believe, too, that this policy accords with the feelings of the people themselves, especially as it has been accompanied by the concession of the unreserved right of adoption. While on the subject of remuneration, I would wish to direct attention to the provision in Section XVIII., for the enforcement of the payments in kind due to the watchman and the mhar by the villagers. In the Deccan, especially, it has long been felt that some such provision was necessary, and that it was a perfect mockery to tell these people to enforce their rights against the village at large by means of a civil suit. There can also be no doubt that the villagers have frequent cause for complaint against this class of servants for not doing their work properly. The relative duties and obligations of the parties are so indefinite and obscure, that it would be hopeless to attempt to provide for their precise performance. We have therefore thought it best to provide for the adjustment of disputes by reference to the ancient village punchayet or jury. The Government are quite alive to the objections that exist to any official interference being exercised in these matters, and care will be taken in the executive instructions that will be issued for the working of this Act to enjoin on Collectors and their assistants the greatest caution in the exercise of their power, and to abstain from interposing their authority except in cases where it is clearly proved that one or other of the contending parties are persistently in the wrong. It will be especially necessary to enjoin care, because there will be perhaps not an unnatural tendency on the part of junior European officers to sympathize with the mhar, as the poorer and weaker party, whereas there can be no doubt that this class of people may, perhaps, take to the wide and lucrative field of employment that is now open to them as domestic servants, and are apt to become somewhat too independent and insubordinate to the villagers, and neglectful of the duties that appertain to their hereditary office.

The next and certainly the most difficult and perplexing question we have tried to deal with, has been the manner in which appointments to the hereditary offices of patel and kulkarni are to be regulated. As I said on a previous occasion, very great difference of opinion has been found to prevail amongst our oldest and best authorities regarding this moot subject of officiating by rotation. It may, I think, be safely assumed, that there

was no precise or uniform system; and that in the case of patels, at all events, the strongest and most influential member of the watan managed to keep all the power and authority of the office in his own hands. It is certain that we have neglected hitherto to lay down any precise and uniform legal rules for nominating to these offices; and that the consequence has been the prevalence of the great confusion, with its attendant evil results, which we hope by the passing of this Bill to put a stop to. We have provided (Section XXVI.) that the custom of the watan anterior to the introduction of Act XI. of 1843 shall be enquired into by an officer of not lower standing than an Assistant or Deputy Collector; and that after the parties interested have had a full opportunity of adducing their proofs and urging their claims, the register is to be prepared, containing a list of those entitled in their own right to hold office. To prevent the future ramifications that must inevitably arise from the growth and multiplication of the offspring of the people thus registered, we have insisted on the principle of primogeniture, and all further sub-divisions with the confusion inseparable therefrom will be prevented. We have carefully guarded against encroaching on the rights and privileges of the other members of the watan except in the matter of service, and we have provided that they shall be eligible for service as deputies of the men entered in the registers. By a recent amendment we have attempted to relax the hard and fast rule of fixed order of rotation, and have allowed the representative watandars to meet together and appoint an officiator by the voice of a majority, including the man whose turn it was to serve. These then are the means by which we hope to secure uniformity and system in nominating to these appointments, and to do away with the objectionable and demoralizing practices that formerly prevailed. Much will depend upon the judgment and discernment of the officers who will have to superintend the preparation of these registers. It will be the duty of the Government to furnish them with as precise rules as possible for their guidance; and they will be strictly enjoined to interfere as little as possible with the past, and not to re-open old disputes and feuds. The provision of Clause 2 of Section LXXIII. will, we hope, prove effectual in preventing decisions which have been arrived at after full enquiry before a competent and trustworthy officer being disturbed. As regards registers that have already been prepared, it will, I hope, be only necessary to make alterations in cases where palpable innovations and wrongs have sprung up since the introduction of the Act of 1843, and which have been perpetuated. Cases which will come under decision for the first time will, I hope, be dealt with in a liberal spirit, and in conformity with the wishes and sentiments of the watandars themselves.

Lastly, I hope we have laid down in a clear and perspicuous manner the responsibilities and liabilities of hereditary village officers. I wish here briefly to refer to the one point regarding which there has been a difference of opinion in the Council, namely, the principle of joint responsibilities as contained in this Bill, and to say that we have merely re-enacted the provisions of the existing law. I am persuaded that, judging from the past, there is no fear of this power being exercised by the Government in a harsh and hasty manner. Looking, too, to the organization of native village society, where every man's character and pursuits are so well known to his neighbours, I believe it would be impossible for any systematic or organized crime to be perpetrated and shielded by the Government village officers without the cognizance of the other watandars; and I think, therefore, it would be impolitic to relieve them from the responsibility of giving information.

If honourable members will turn to Clause (*d*) of Section LXIV. they will see that this principle of responsibility has been laid down for the first time in the case of the crime of cattle poisoning, of which the mhars of the village are often believed to be guilty, either from motives of revenge on account of non-payment of their dues, or in order to obtain the skins of the animals. This is a crime which is most difficult to detect and punish, and which entails the most ruinous consequences on the ryots. I believe the very guarded provision which we have made is most necessary, and I hope it may prove effectual. Here, again, the power of punishment is reserved to the Government alone, and will certainly never be exercised except in very flagrant and extreme cases.

I have endeavoured to explain the ways by which we hope to utilize and to maintain the old village system. These ways are: 1.—By enacting and enforcing the common law of the country against the alienation of watan property; and by providing a means for enforcing the remuneration by payments in kind of the humble but invaluable services of the watchman and mhar. 2nd.—By regulating the manner in which appointments to the offices of patel and kulkarni are for the future to be made; and by putting a stop to the demoralizing and objectionable mode of proceedings which have hitherto prevailed on these occasions. 3rd.—By defining the obligations and the liabilities of the holders of these hereditary officers.

It would be folly to attempt to conceal the fact that the inevitable tendency of our centralized system of administration, with its precise and uniform laws and regulations, and rules of procedure, is and must be to emasculate the vigour, and to contract the freedom and latitude of action which were the characteristics of this form of separate village government. I say that it would be idle to suppose that by any efforts of ours we can restore these ancient institutions to their original political power, even if we were desirous to do so. But I do say that we shall have accomplished no unimportant task if we succeed in gathering up and binding together the valuable remnants of these institutions, and utilizing and adapting them to the wants and requirements of the present day. For my own part I am far from confident that we shall succeed in this endeavour. But whether we fail or whether we succeed we shall at all events have the satisfaction of knowing that we have bestowed the most unremitting care on this difficult subject, and have dealt with it in the most cautious and conservative spirit.

Rao Sahib Vishvannath Narayan Mandlik still objects to certain points in the measure.

The Honourable Rao Sahib VISHVANATH NARAYAN MANDLIK—Sir,—I do not wish to detain the Council, but after what the Honourable Mr. Chapman has said, I think it right to express my opinion upon the measure. I consider many of the provisions in this new law to be improvements; but I am not so hopeful regarding others, which I will specify in order that the action of the Executive officers entrusted with carrying out this law may be more cautious, and that they may be more anxious to secure the objects which the Legislature had in view in framing it. When the Bill was being considered in detail I differed, as I do now, from the policy of alienations which is now contained in it. I think that the common law in regard to alienations was for the sale and mortgage of watans, with the sanction of the ruling power, during the time of the Peishwas. The Elphinstone Code was more rigid and did not permit of alienations. But a loose practise sprung up and having gone on for thirty years, I defer to the opinions

of those on whose advice the present provisions of the law have been framed. Regarding the recognition of adoption, the present law is an improvement upon the old practice, and it will prove entirely in conformity with the laws of the country generally. Regarding representative watandars, notwithstanding the great care that has been bestowed upon this part of the Bill, and notwithstanding the elective principle introduced by the Honourable Colonel Anderson, I think there is still great room left for improvements which may possibly be suggested by further administrative experience. I hope we may yet see our way to throwing more life into watans in the direction indicated by the Honourable Colonel Anderson's amendments. At present, if I may say so, most of the watans are in a fair way of going through a process tending to gradual petrifaction. As to the question of joint responsibilities in watans, I am sorry that I stand in a minority in opposing the theory that one man should be held responsible for the deeds of another over whom he may have no control whatever. Education has now spread, and is still spreading over the Presidency, and it may take away many watandars from the actual scene of their watans to places where they may be educated, and where they may go in search of employment. Surely the principle of joint responsibility, if it operated to depriving these people of their interest in their watan, would not be a just one. It is no argument that because this is an old principle which we are now re-enacting, therefore it ought to stand, and I hope circumstances may yet induce this Council to modify their opinions on the subject. Giving information to Government is no doubt the duty of all village officers, and if it was in respect of political offences I would say, let there be joint responsiblity in watans; but seeing that His Excellency has introduced a change in the Bill, by which offences are not to be tried at the Magistrate's Court, but at Courts of Session, I hope there will yet be further concessions in favour of the watandars. As to Sections 18, 19, 20, and 21, defining the rights and duties of village officers and the way they ought to be remunerated, I think they contain a very great innovation. I was only restrained from pressing my opposition to a division by the distinct declaration from the Executive members of Government present, that the principle *quieta non moveri* would regulate the operations of the officers entrusted with the carrying out of the Bill. If it is only a few districts in which the crime of cattle poisoning prevails, I hope it will be a point of careful consideration before the sections I have quoted are carried into execution in other districts. The provisions in Part X., referring to the duties which are to be laid down and the registers to be prepared about mhars, are also an innovation which will require to be very carefully worked. I omitted to make one remark upon the last occasion that the Honourable Mr. Rogers withdrew two sections from the Bill affecting jurisdiction. I did not move any amendment then, because there was a decision reported in the sixth volume of the High Court Reports before the present Bombay High Courts Act was passed; and I was not therefore prepared to say how far the authority of this Council, as interpreted by the old laws of the High Court, would be affected under the new laws. We have been told that those provisions would be considered in another Bill elsewhere. It may be so. But we are now passing exact and rigid laws giving large powers to the executive officers of Government. I am quite prepared to support the passing of such laws, when their necessity is proved. But when such laws are passed, I would hold the executive officers strictly bound to carry them out; and when they are transgressed, the ordinary tribunals of the land should have the right to adjudge about such transgressions. So that the meanest subject of Her Majesty may be able to say that every wrong has a remedy.

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His Excellency the PRESIDENT remarked that it had been contended in the memorials addressed to the Council in the early stages of the discussion on this Bill, that it would interfere with the rights of inamdars, jaghirdars, &c., and he wished therefore to point out, before the final passing of the measure, that a special se had now been introduced which would amply protect these interests.

The Bill read a third time and passed.

The Bill was then read a third time and passed, and the Council adjourned.

By order of His Excellency the Governor in Council,
JOHN NUGENT,
Acting Under Secretary to Government.

Poona, 15*th October* 1874.